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RECORD, CASE No. 13,462.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 309.

ALGERNON S. GARNETT, APPELLANT,

vs.

WILLIAM H. GAINES AND MARIA GAINES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS.

FILED JANUARY 2, 1889.

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	1	1
Appearance of defendant	6	4
Order filing answer, demurrer, and cross-bill	6	4
Answer	6	4
Demurrer	11	7
Cross-bill	11	7
Order granting leave to amend complaint	12	8
Order filing replication	13	8
Replication	13	8
Order granting leave to file amended answer	13	8
Supplemental answer	13	9
Demurrer	25	16
Cross-bill	25	17
Order as to submission, filing briefs, &c.	27	17
Order filing stipulation as to facts	28	18
Stipulation as to facts	28	18
Order filing stipulation as to depositions, &c.	29	19
Stipulation as to depositions, &c.	29	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 16, 1891.

	Original.	Print.
Order of dismissal as to M. W. and Martha Toole	30	19
Interlocutory decree	30	19
Order filing master's report	32	20
Master's report	32	21
Evidence before the master	34	22
Testimony of Albert B. Gaines	34	22
John D. Ware	35	22
O. F. Smith	36	23
U. M. Sloan	36	24
George W. Pray	37	24
A. P. Aldrich	38	25
P. J. Ledwidge	39	25
William H. Moyston	40	26
A. P. Aldrich	40	26
Order filing exceptions to master's report	41	27
Exceptions to master's report	42	27
Depositions and proofs on final hearing	43	28
Map of W. H. Gaines' claim, marked "A"	44	28
Map showing old improvements	45	28
Map of W. H. Gaines' claim, marked "B"	46	28
Certified copy of petition No. 784, before the Hot Springs Commission, &c.	47	29
Petition of W. H. and Maria Gaines	48	29
Letter, Commissioner to register and receiver, Nov. 25, 1851	76	41
Letter, Secretary to Commissioner, November 21, 1851	78	42
Application of Maria Gaines *et al.*	79	42
Register's certificates	80	42
Receiver's receipt, December 19, 1851	81	43
Copy of tract book	82	43
Writ of possession	84	44
Statement of evidence offered	86	46
Testimony of William H. Gaines	91	48
Robert B. Runyon	114	58
Jacob W. Parker	126	64
Alfred Whittington	135	69
Jacob W. Parker (recalled)	143	73
Abraham Peters	143	73
Henry Robinson	146	75
Albert Belding	149	76
John H. Lacroy	150	77
William Curl	154	78
George Belding	157	80
Charles Brown	177	89
Joe Crichter	182	91
Elijah Harris	184	92
Nathan H. Cloyes	187	94
Samuel H. Stitt	193	97
Hiram Irwin	196	99
William H. Gaines	197	99
Alphonso Curl	208	104
Hiram Irwin (recalled)	209	105
George M. French	211	106

	Original.	Print.
Power of attorney from William H. Gaines to Albert B. Gaines, December 11, 1879	214	107
Article descriptive of improvements of Abigail Dupass, March 25, 1852	216	108
List of real property assessed for taxation	217	109
Quitclaim of George Belding *et ux.*, October 20, 1877	218	109
Judgment of supreme court of Arkansas in Burke *vs.* Gaines *et al.*	220	110
Certified copy of petition No. 160, before the Hot Springs Commission, &c.	222	111
Petition of Michael W. Toale *et ux.*	223	111
Map of M. W. Toole's claim	227	112
Writ of possession	229	112
Motion for leave to amend petition	233	115
Order consolidating claim	235	115
Testimony of M. W. Toole	235	115
James B. McCaffrey	244	118
Louis Bertsch	247	119
Jonathan Brantley	249	120
Robert G. Davies	252	121
Findings of commission	257	123
Final decree	260	124
Order on motion to set aside decree	261	124
Motion to set aside decree	262	125
Order filing and approving bond	264	126
Order filing motion to strike motion to set aside decree	264	126
Motion to strike motion to set aside decree	264	126
Order filing allowance of supersedeas	265	127
Order granting time to file supersedeas bond	265	127
Order filing and approving bond	266	127
Bond	266	128
Clerk's certificate	268	128

1 Be it remembered that on the 23rd day of May, 1884, came into the office of the clerk of the United States circuit court for the eastern district of Arkansas William H. Gaines and wife, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and filed therein, on the chancery side of said court, their bill of complaint against Michael W. Toole *et al.*, which is as follows:

United States Circuit Court, Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
MICHAEL W. TOOLE, MARTHA TOOLE, His Wife, and A. S. GARNETT, Defendants.

William H. Gaines and Maria Gaines, his wife, bring this suit against Michael W. Toole and Martha Toole, *tis* wife, and A. S. Garnett, and for cause o*p* action allege—

That in the year 1851, in pursuance of the instruction of the Secretary of the Interior, plaintiff Maria Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, entered, under the pre-emption laws of the United States, the *the* southwest quarter of section thirty-three, in township two (2) —, *s*ange nineteen (19) west, for which they paid the United States Government two hundred dollars, which was advanced and paid by plaintiff Wm. H. Gaines, and which money the United States still retains.

At the time of said entry a small portion of said land was occupied by Mrs. Lydia Belding, widow of Ludovicus Belding, and the portion of said lands for which this suit is brought was occupied
2 by —— ——, and in — Wm. H. Gaines, Maria Gaines, Albert Belding, Henry Belding, and George Belding, under the *provision* and control of Wm. H. Gaines, brought suit in the Hot Springs circuit court against —— —— and recovered judgment for the possession of said land, which judgment was afterward affirmed by the supreme court of the State of Arkansas and by the Supreme Court of the United States, and on the — day of ——, 1856, William H. Gaines was, by the sheriff of Hot Springs county, put into the possession of said property by virtue of a writ of possession issued upon the judgment of said Hot Springs circuit court in obedience to the mandates of said supreme courts, both of the State and of the United States, and said plaintiffs, William H. Gaines and Maria Gaines, his wife, remained in peac-able and quiet possession of said property until the 1st day of J*s*ne, 1876, when they were dispossessed of said property by a receiver appointed by the Court of Claims of the United States under an act of Congress entitled "An act in relation to the Hot Springs reservation in Arkansas," approved June 11th, 1870.

Plaintiffs entered into possession by virtue of said entry and by virtue of the decisions of said State and United States supreme courts and the writs of possession issued in pursuance of said judgments, and continued in possession for a period of about twenty years, until

the Supreme Court of the United States, in a suit to determine to whom the patent should issue, decided that said lands were not subject to pre-emption or entry, and that no claimant was entitled to a patent, but the same was still the property of the United States, which decision was rendered April 24th, 1876.

Plaintiffs during said twenty years paid taxes on said property and fenced and built houses on the same and otherwise improved the same. In the year 1875 plaintiff William H. Gaines, being fully authorized by said heirs, leased a lot of ground, which has since been laid off into lots and blocks by the Hot Springs Commission
3 in pursuance of an act of Congress and is now known as lot nineteen (19), in block seventy-seven (77), to Michael W. Toole and Martha Toole, his wife, which lease was a verbal lease, and and agreement — to sign a written one that was never signed, for the term of one year, to be renewed at the election of the lessee- from year to year until the title to the Hot Springs quarter section of land was settled, for an annual rent of —, payable in monthly installments of —. Said lease also provides that all buildings and improvements erected on said lot by the lessee- might be removed therefrom during the continuance of the lease or within thirty days thereafter, but that no buildings or improvements erected could be removed while said rent or any part thereof remained due and unpaid.

It also provides that the lessor should have a lien on all buildings and improvements to secure the rent, a copy of which is hereto attached in Exhibit "A" and made a part hereof.

Said lessee- took possession of said land under and by virtue of said lease only, and in no other way whatever, and *he* and — assigns occupied the same under said lease until the 1st day of June, 1876, at which time the United States Government dispossessed all parties to this suit that were in possession of said land and took possession thereof and leased said land and improvements in the name of the United States Government, through A. O. Morgan, a receiver appointed by the U. S. Court of Claims for that purpose, and continued in the legal possession thereof until the same was entered at U. S. land office, to wit, ——, 1881.

That on the 24th day of April, 1876, said lessees and their assigns owed the lessor for rent the sum of ——.

Said lessees and their assigns failed to remove said buildings and improvements erected by them at any time during or within thirty days after the expiration of the lease, and by virtue of the provisions of the lease said buildings and improvements erected by said lessees and their assigns became the buildings and improvements of Wm. H. Gaines.

4 That in the year 1877 said lessees sold and transferred to A. S. Garnett all their right, title, and claim to said premises, he, A. S. Garnett, well knowing before said transfer all the terms and conditions of said lease, which transfer was made without the knowledge or consent of the plaintiff-.

Plaintiffs, by arrangement with George, Henry, and Albert Belding, having become the owners of said claim—to wit, by a deed from Albert, Henry, and George Belding to Wm. H. Gaines for one un-

divided half of three-fourths of said pre-emption claim, dated June 1st, 1860, a copy of which is hereto attached and made part hereof, marked Exhibit "B;" also a deed from Albert Belding to William H. Gaines for his entire interest, dated October 20th, 1877, a copy of which is hereto attached and made part hereof, marked Exhibit "C;" also a deed from George Belding to William H. Gaines; also deed from Henry Belding to William H. Gaines, each for their entire interest; a copy of said deeds is in Exhibit "A" hereto—aver that in less than six calendar months after the first sitting of the Hot Springs Commission, under the act of Congress of the United States entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," approved March 3rd, 1877, they filed their claim before the said commission to purchase said lots, and that Michael W. and Martha Toole filed a like claim, and upon the hearing of said claims they were consolidated by said commission for the purpose of hearing the testimony; and said petitions filed and the testimony taken before said commission clearly showed that Michael W. and Martha Toole had acquired their possession in no other way but by said lease made by plaintiff Wm. H. Gaines to said Michael W. and Martha Toole, as will more fully appear from a complete copy of the petition, testimony, and record entries in said claims filed herewith and marked Exhibit "A" and made part hereof; and notwithstanding that said petition and testimony showed that defendants Michael W. and Martha Toole acquired possession only by virtue of said lease, still said commission misconstrued the law applicable to that state of facts and awarded the right to purchase said lots to defendants Michael W. and Martha Toole, and since said award said defendant- has purchased said lots from the United States and received a patent therefor, and on account of said misconstruction of the law as applied to the facts before said commission the right to purchase said lots, which in law, equity, and good conscience should have been awarded to plaintiffs, was by said misconstruction of the law illegally and wrongfully awarded to defendants Michael W. and Martha Toole by said Hot Springs Commission.

Plaintiffs aver that as defendants have never had any other right or title to said lots or to the possession thereof than that which they derived from said lease and under covenants to restore possession to plaintiff Wm. H. Gaines, that said defendants should be held to hold said lots as trustees for the use and benefit of plaintiffs.

Plaintiffs offer to pay any sum of money that may be found due to the defendants or either of them by reason of any money paid to the United States for the purchase of said lots, and to do all other acts which may be found to be just and equitable.

Plaintiffs aver the property herein sued for is worth more than five hundred dollars, and that this cause of action arises wholly under the law of the United States.

Plaintiffs ask that defendants be required to answer, but not under oath; and they pray that an account may be taken of the state of accounts between themselves or either of them and said defendants, severally; that they may be allowed reasonable rents for

the occupancy of said premises; that defendants may be decreed to hold said lots as trustees for the plaintiffs and to convey the same to the plaintiffs, and that they may have such other relief as may be equitable.

M. W. BENJAMIN,
R. G. DAVIES,
Solicitors.

Good for costs.
M. W. BENJAMIN.

(Endorsed:) Filed and writ issued May 23rd, 1884. Ralph L. Goodrich, clerk, by U. P. Feild, D. C.

6 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 14th day of April, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On May 29th, 1884:

WM. H. GAINES and WIFE }
vs. } 646.
MICHAEL W. TOOLE *et al.* }

Comes the defendant A. S. Garnett, by John M. Harrell, Esq., his solicitor, and enters herein his appearance.

And on June 30th, 1884, as follows:

646. Comes the defendant, A. S. Garnett, by Clark & Williams, Esqs., his solicitors, and files herein his answer, demurrer, and cross-bill; which answer, demurrer, &c., are as follows:

United States Circuit Court in and for the Eastern District of Arkansas, October Term Thereof, 1884.

WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs, }
vs. }
MICHAEL W. TOOLE and MARTHA TOOLE, His Wife, and ALGERNON S. GARNETT, Defendants. }

Answer.

7 Algernon S. Garnett, defendant, for answer to the complaint of the above-named plaintiffs, states that said Michael W. Toole and Martha Toole sold all their right, title, claim, and interest in the property described in said complaint to said Algernon S. Garnett on the — day of ——, 18—, and that said Algernon S. Garnett is now in possession of said premises and the owner of all

the improvements thereon, which were erected by him, the said Algernon S. Garnett, in the place of the improvements erected by said Toole and wife, and said improvements so erected by said A. S. Garnett are worth two thousand five hundred dollars.

That it is not true, as in said complaint alleged, that in 1751 or at any other time the heirs of Ludovicus Belding entered said land, because at that time said land was reserved from sale or entry by act of Congress of the 20th day of April, 1832.

It is true that on the 29th day of May, 1830, Ludovicus Belding occupied said quarter section as a tenant of one John Percifull under a written lease, and under said lease had occupied and cultivated a portion thereof in 1829, and under instructions from the Secretary of the Interior the said heirs were permitted to pay the entrance money for said land, and the register and receiver of the land office at Washington, Arkansas, in which land district said land was then embraced, were instructed to issue a certificate of entry therefor, noting thereon that it conflicted with said act of reservation and the New Madrid location of Frances Langlois, No. 467, but said entry was absolutely void and in violation of law, and coming regularly before the Hon. Jacob Thompson, Secretary of the Interior, for his consideration on the — day of ——, 18—, he annulled and vacated said entry and certificate and held the same for naught, and the said entry has been thenceforth held void by the Supreme Court of the United States in suits in which plaintiffs were parties, and by every department of the Federal Government—executive, legislative, and judicial.

Said defendant denies that plaintiffs ever obtained possession under any process of any court whatever, or ever had possession of the particular lot, and avers that the same was vacant and unoccupied land of the Government in 1875, when said Michael W. Toole and Martha, his wife, went upon and improved the same; and defendant denies that plaintiffs ever made any lease or agreement of lease with said Toole and wife or either of them, or had any right to make said lease, and denies that either the said Toole and wife or said Garnett ever occupied the same as tenants of the plaintiffs; that the improvements made thereon by said Toole and wife were made prior to the 24th day of April, 1876, and partly on land claimed by Rumpter, and from thence to their sale to said Garnett were occupied by them as their residence, and were so made solely at the expense and by the labor of said Toole and wife; that under the provisions of an act of Congress entitled "An act in relation to the Hot Springs reservation, in the State of Arkansas," which was passed on the 31st day of May, 1870, and became a law, as provided by the Constitution of the United States, the plaintiffs instituted their suit against the United States in the Court of Claims of the United States, — in such cause such proceedings were had that on the 26th day of April, 1875, a decree was rendered against plaintiffs' said entry and their title and claim thereunder, from which decree plaintiffs appealed to the Supreme Court of the United States. In such court such proceedings were had that afterwards, to wit, on the 24th day of April, 1876, the said decree of said

8

Court of Claims was affirmed, and under the provisions of said act the said Court of Claims in said cause appointed A. O. Morgan a receiver to take charge of and rent out all the said Hot Springs property; that said receiver qualified and entered upon the duties of his office and under said decree ousted plaintiffs of all their possession, and demanded full rent of said Toole and wife for said improvements on and after the 1st day of June, 1876, and the said lot being land of the United States, the said Toole and wife attorned to said United States and took a written lease from said receiver until March 3rd, 1877. Said lease is not in possession of
9 defendant, as the same and receipts of rent paid herein were filed with the Hot Springs commissioners in connection with the claim of said Toole and wife filed before said commission for said lot, as hereinafter mentioned. Defendant prays leave to attach hereto, if deemed necessary, certified copies of said lease and receipts and petition and testimony before said commissioners in preferring and proving said claim to said lot, and so much of the record as is necessary to show plaintiffs' claim in said suit. As said record is voluminous, they pray they may be excused from exhibiting more of said record than is necessary to show the pendency and subject-matter of said suit, and that plaintiffs were parties and the decree therein rendered.

And defendant sets up said decree as a complete bar to the plaintiffs' pretences of claim in this case.

The plaintiffs did not make the improvements on said lot and never owned them or any part thereof and never paid or offered to pay for the same.

That on the 3rd day of March, 1877, said Toole and wife were the owners of the improvements and occupants of the same on said lot, and said defendant, Garnett, finding them in possession and owner of said improvements on said lot, made a bargain with them to purchase the same, upon the terms and conditions contained in their title to him, a copy of which is hereto annexed and prayed to be made part hereof, and said Michael W. Toole having died before award — made upon said claim, the right to purchase was awarded to said Martha Toole, and said defendant having paid the price and purchase-money agreed upon by said contract to convey to said Michael M. Toole in his lifetime, and having paid an additional sum of two hundred dollars to said Martha Toole, and the purchase-money required to be paid to the United States for said lot, the same was conveyed to said defendant by said Martha Toole, under which conveyance last named said defendant entered and was possessor of said lot and has remained in possession thereof ever since;
10 that the said defendant denies that plaintiffs filed any specific claim for said lot before said commissioners, and at the time of making his said purchase and paying his said purchase-money said defendant had no notice of any claim of plaintiffs to said lot, except the general assertion of claim under said void entry, and that said plaintiffs lived in the same town, a neighbor of defendants, met him from day to day, had full knowledge of his said bargain in ample time to have prevented the consum-ation of his purchase and

the payment of the purchase-money, and never gave the least intimation of dissatisfaction with said award of said commissioners or that they had a claim to said lot, but, on the contrary, frequently declared themselves contented with said awards, and when defendant Garnett concluded to excavate said lot and erect the brick building thereon, in the winter of 1880 and 1881, not only allowed defendant to expend large sums for said improvement, but joined a like building with the building and excavation of said defendant on a lot adjoining, belonging to plaintiffs, said united buildings being so constructed on said several lots by co-operation of plaintiffs with said defendant as to form two buildings with a party wall between said buildings paid for in common and between plaintiffs and said defendant's lots, and said defendant sets up the forgoing facts as an estoppel of the plaintiff- to question defendant's title and relies upon being an innocent purchaser without notice.

It is true that Michael W. and Martha Toole, within six months after the U. S. commissioners first sat and gave notice at Hot Springs, under said act of Congress of March 3rd, 1877, and within twelve months after the approval of said act, filed their claim for permission to purchase said lot, but defendant denies that the said plaintiffs ever presented said claim and said commissioners, having heard the evidence, awarded the right to purchase said lot to said Martha Toole, and he denies that said plaintiffs ever presented any claim for said lot except an omnibus claim covering the
11 principal part of the city of Hot Springs, by far the greater part of which had been held adversely to plaintiffs for many years, some — it for more than fifty years, or ever since said John Percifull took possession, in 1809. Defendant denies that said commissioners misconstrued the law upon the facts of said case. It is true that said lots have been purchased from the United States and a patent issued therefor. It is not true that defendant has no other right or title except that derived from said pretended lease.

And, having fully answered, he demurs to said bill and prays to have the benefit of his said demurrer on the final hearing, and for causes of demurrer assigns the following:

1. There is no equity upon the face of complainant's complaint.

2. The same discloses the final adjudication of the matters in controversy by a competent tribunal, to wit, the Hot Springs Commission.

3rd. The pretended lease disclosed is by parol and void by the statute of frauds, beyond a period of one year, and, if made, expired in 1876, before the passage of said act of Congress.

4. The bill fails to disclose that plaintiffs owned any improvements upon or occupied said lot or any part thereof on the 3rd day of March, 1877.

Said complaint is otherwise defective, informal, and insufficient.

Cross-Bill.

And, by way of cross-bill, said defendant Garnett states that he is the owner of valuable improvements placed upon said lot, which

are of the value and cost in the makin- two thousand five hundred dollars, and was such owner at the date of the entry of said lot in the United States land office as aforesaid by payment of said appraised price of said lot, and has paid all taxes and assessments on said lot—State, county, and city taxes—since the date of said purchase.

12 And should it turn out in proof that the *title* is entitled to recover and the court be of the opinion that said entry was for the benefit of plaintiffs, then it was an entry of the improvements of this defendant upon the public land of the United States.

Wherefore he prays, in that event, that he be excused from the payment of all rents, as provided in section two thousand two hundred and sixty (2260), Gantt's Digest of the Statutes of Arkansas, and that he be allowed and decreed against the plaintiffs the full value of all of his said improvements and his taxes and assessments *ro* paid, and that he be discharged hereof with all his costs in this suit expended.

(Endorsed:) Filed June 30th, 1884. Ralph L. Goodrich, clerk.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 27th day of October, anno Domini one thousand eight hundred and eighty-four, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On December 1st, 1884:

646. The plaintiffs, by M. W. Benjamin, Esq., their solicitor, ask leave to amend their complaint by interlineation, which is granted; and thereupon said amendments are made.

And on January 5th, 1885:

13 646. Come the complainants, by M. W. Benjamin and R. G. Davies, Esqs., their solicitors, and file herein their replication to defendants' answer; which replication is as follows:

U. S. Circuit Court, East. Dist. of Arkansas.

GAINES and WIFE }
vs. }
TOOLE *et al.* }

The said plaintiffs say their bill is true, and that the defendants' answer as set forth is not true; and this they are ready to verify.

(Endorsed:) Filed January 5th, 1884. Ralph L. Goodrich, clerk.

And on February 2nd, 188–, as follows:

646. And the said complainants having obtained leave of the court

to file an amended complaint herein, leave is hereby granted the said defendants within thirty days from and after the date of this order to file an amended answer.

And on March 2nd, 1885, the following supplemental answer was filed:

United States Circuit Court, Eastern District of Arkansas.

14 WILLIAM H. GAINES and MARIA GAINES, His Wife, Plaintiffs,
vs.
MICHAEL W. TOOLE and WIFE and A. S. GARNETT, Defendants.

Supplemental Answer of A. S. Garnett.

Comes the said defendant, A. S. Garnett, and, leave of the court being had, for his supplemental separate answer to the bill of complaint of William H. Gaines and Maria Gaines, his wife, defendant saith:

This defendant, reserving all exceptions and advantages that may arise to him from the many errors and insufficiencies of the said complaint, for his separate answer thereto saith—

That he denies the truth of the statement contained in said complaint that Maria Gaines, Albert Belding, Henry Belding, and George Belding, as heirs of Ludovicus Belding, entered under the pre-emption laws of the United States the southwest quarter of section thirty-three, in township two south of the base line, in range nineteen west of the fifth principal meridian, in the year 1851, or that they received judgment for it, or paid the Government of the United States for it, or were put in possession of it by virtue of a writ of possession issued to the sheriff of Hot Springs county in 1856 upon a judgment of the Hot Springs circuit court, in obedience to mandates of the State and United States supreme courts, or that they occupied it under any claim of right and otherwise improved it, or that they paid taxes upon it, or that said plaintiffs became owners of it by any deeds of Albert, George, and Henry Belding.

He denies that defendants failed to remove the improvements erected by them on said land, and that the said improvements became the property of the plaintiff Wm. H. Gaines by such failure; that defendants or either of them owed said plaintiff any sum
15 for rent on the 24th day of April, 1876; that the award of the right to purchase said lot in controversy from the United States to this defendant by the Hot Springs Commission was wrongful, or that said commission "misconstrued the law applicable to the facts," or that said defendant Garnett acquired possession only by virtue of the alleged lease from plaintiffs to said Toole or said Toole and wife transferred to this defendant.

On the contrary thereof, defendant saith that said plaintiffs' claim before said commission was not in right of said Albert, Henry, and George Belding or Maria Gaines, as heirs of Belding, who had, as they well knew, no right to enter said land or prefer a claim

under the act for disposing of said lot; that the only possession they or their ancestor ever had of said land was as tenants of John Percifull and those claiming under him, who himself had no right to enter or claim said land; that said land was not at any time subject to entry from and after April 20th, 1832, to the date of the award by said commission to this defendant; and defendant avers the truth to be that under instructions of the Secretary of the Interior, Hon. H. H. Stewart, dated November 21st, 1851, stating "that said entry would remain subject to the same power, revision, and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry," an illegal and void entry of said land was permitted to plaintiffs in order that they might contest the same with John C. Hale, who occupied parts of said quarter section, but not any part of the land for which this action is instituted, and thereon recovered against said Hale the alleged judgment.

But that thereafter, in a suit by said Hale, to which H. M. Rector was also a party, in the same court, the plaintiffs and said Albert, Henry, and George were parties because said certificate of entry on which said alleged judgment was based was held and decreed to be void and of no effect, and plaintiffs perpetually enjoined from executing said judgment by a decree which the supreme courts
16 of Arkansas and of the United States affirmed.

That said certificate of entry coming on regularly for the consideration of the Secretary of the Interior, the Honorable Jacob Thompson, in 1860, was vacated and set aside.

The said alleged entry has thenceforth been held void in suits and proceedings in which the parties were plaintiffs, or after asserting right of pre-emption, by every court having jurisdiction, State and Federal, and by acts of Congress reserving said section for the future disposal of the United States, not to be located or appropriated for any other purpose whatever, in cases for the submission of the rights of all claimants to the Court of Claims and for the disposal of the same by a commission, with power to perpetually reserve any part of it to the United States—in a word, by every department of the Government—executive, legislative, and judicial.

And said plaintiff, William H. Gaines, declared in his testimony before the Hot Springs Commission, appointed under the act of Congress of March 3rd, 1877, to lay off said reservation into blocks, lots, and streets, the lines of which were to correspond with existing boundary lines of occupants as nearly as may be consistent with the interest of the United States, after having enumerated all his purchases from settlers on the reservation and the houses and improvements erected by him and the cost of the same, in answer to the following questions propounded to him on cross-examination by John M. Harrell:

Q. "Whose property did you claim that to be in 1858—those cabins and that rail fence?"

A. "I was acting as agent for the Belding heirs, but I claimed the houses that I put up as my own; they were put up and purchased with my own money."

Q. "Those twenty houses that were standing there just before the war you claimed, did you?"

A. "No, sir."

17 Q. "Which was the property of the Belding heirs?"

A. "I have a transfer from the Belding heirs; it is all mine."

Q. "Were those transfers made prior to your petition in bankruptcy?"

A. "Very recently; since they have been hunted up to give me trouble."

Q. "Did you put any of this property in your petition in bankruptcy?"

A. "I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven years ago."

Q. "When did you file your petition in bankruptcy?"

A. "I cannot recollect the date."

Q. "Did you transfer it then to the Belding heirs?"

A. "No, sir."

Q. "In whose right do you now make your claim to this property?"

A. "In the right of Maria Gaines and myself."

Q. "Did the Belding heirs file any petition?"

A. "No, sir; I am controlling it all myself."

Q. "Did you pay any taxes on this property in your own name?"

A. "No, sir; in the name of the Belding heirs."

These answers were taken as corrective of the statement of his testimony-in-chief in the same examination, in which the said witness stated:

"I know of no one else that has paid any taxes upon said land or ever pretended to give them in for assessment. I so strongly believed that the property was mine and that I would get a title to it that I paid the taxes for 1875 only a few days before the decree of April 24th, 1876."

The said alleged judgment at law in favor of said heirs were rendered upon said conditional certificate under a statute of the State of Arkansas which provides that—

18 "Where an improvement has been made on public land of the United States, whether the land had been surveyed or not, and where any other person than those to whom the right has been given by the preceding clause in this section is in the possession of such improvements," ejectment may be brought for the possession of such improvements, and the court of equity which enjoined said judgment held that the plaintiffs had a possessory right and title to the improvements made by them as against said Hale and Rector, contending for a part of said section, and it was decreed that each of the parties to said suit have title to their respective improvements made by them against each other, and that each and all of the parties be enjoined from enforcing the said judgment at law.

That April 20th, 1832, in disregard of the pretended pre-emption

of the heirs of Belding, the Congress of the United States passed an act reserving said quarter section and three and three-quarters of sections adjoining "for the future disposal of the United States, not to be located or appropriated for any other purpose whatever," whereby said land was withdrawn from entry and sale and was no longer "public land of the United States" in the sense in which the term "public land" could be intended in said State statute, and general laws of the State and United States were not applicable to said land so reserved, since which act of reservation a large part of said quarter section, to wit, the Hot Springs Mountain reservation, has been forever reserved from sale or entry under the provisions of the act of Congress in that behalf — and provided.

As to the alleged lease to said Title or said Toole and wife, defendant states that on the -- day of ——, 1875, said Toole accepted a verbal lease from said Wm. H. Gaines of only a small part of the land now known as lot nineteen (19), in block seventy-seven (77), as laid off and platted by the said commission, only a small part of said land being *being* included in said lease, and that said improvements were made by the money, materials, and labor of said defendant Toole and wife prior to the 24th day of April, 1876, and were by plaintiffs regarded and conceded to be the property of said defendants; that no lease was executed to them and was never renewed, and defendant Toole and wife denied plaintiffs' right to any
19 part of said lot from the date of the improvement of said land; that the greater part of said lot is upon land claimed by the Sumpter heirs, and by said verbal lease plaintiffs stipulated that said lessees should have the right to remove said improvements at any time within thirty days after the end of the term of lease, as alleged in said complaint; that said lease contained no stipulation that said improvements were to become forfeited to tte plaintiffs; ttat said Toole continued to occupy tis improvements on the Sumpter claim from thence until he and said Martha Toole, in 1877, conveyed to A. S. Garnett; that the U. S. Court of Claims, under the act of Congress of 1870, having declared said entry void and the property of all kinds on said reservation the property of the United States, — April 25th, 1875, said decision was affirmed on appeal from said Court of Claims by tte Supreme Court of the United States April 24th, 1876.

That under the provisions of said act of 1870 the said Court of Claims in said cause appointed a receiver, to wit, Albert O. Morgan, to take charge of and rent out all of said property on said reservation, and, having qualified as such receiver, said Morgan entered upon the duties of said office and, under said decree, on the 1st day of June, 1876, ousted the plaintiffs of all their possessions on said reservation, as stated in plaintiffs' complaint and by said William H. Gaines in his testimony before said Hot Springs Commission as a witness in his own behalf in support of his claim to said lot and other lots to which he and said Maria Gaines preferred claim before said commission under the act of March 3rd, 1877.

Said witness stated, in the course of his testimony-in-chief, "When A. O. Morgan, the United States receiver, took possession I was th

first man on the reservation to turn over my property to him. I turned over all property built by myself, both that held in person and that held by my tenants."

That, after hearing of the said judgment of affirmance of said decree of said Court of Claims, William H. Gaines, for himself
20 and as agent for Maria Gaines, his wife, *he* was desirour of accepting the rent to said date of April 25th, 1875, and release this defendant and all his tenants, and proposed to make this arrangement with defendant, to which defendant fully agreed, and plaintiffs from the dati of said affirmance disclaimed all property in said lot; that, in fact, as a result of said decisions and the instructions of said Court of Claims to said receiver, defendant no longer held said property under said lease or by permission of said receiver, but that both plaintiffs and defendant were evicted therefrom by the United States having paramount title, without procurement of defendant.

That, thenceforth from the expiration of the plaintiffs' title to said land, said Toole, being in occupation of said improvements ro erected by him as aforesaid and being prevented from removing the said improvements by said orders and instructions of the Court of Claims, was notified by said receiver that he would exercise the right to evict defendant therefrom unless defendant would attorn to and take from said United States a new lease; and upon said demand said Toole, June 1st, 1876, took said lease from raid receiver, yielding his title in said improvements to said United States, and Sep. —, 1877, conveyed to A. S. Garnett all his improvements and right and claim in said lot.

That Toole was by said demand of said receiver, under his said instructions, practically exfelled and evicted thereform and the title and possession of said plaintiffs to said ground determined, and the official acts of said receiver in this behalf of public notoriety.

That defendant's explicit disavowal and disclaimer of holding thereafter under said plaintiffs was by him annosnced to plaintiffs and plaintiffs' acquiescence publicly announced, as testified by plaintiff William H. Gaines before said commission, that they "disclaimed owning anything until the act of Congress was passed," meaning the act of 1877, and, so acquiescing, pointed out said lot to said receiver and told him to take possession of it and of said improvements, which said receiver in effect did as aforesaid, and so plaintiffs' cove-
21 nant in said lease to protect said defendant in the removal of said improvements as well as the implied covenants of right of possession to said lot and quiet enjoyment were annulled, as was also said lease entire.

That said plaintiffs' covenant in said lease, whereby they stipulated with said lessee that defendant Toole should have the right to remove his improvements within thirty days, was thous broken and rendered impossible of fulfilment by the decrees and ordehs of said courts and acts of said receiver, whereby this defendant was wholly deprived of the express stipulations with plaintiffs under which he erected said improvements and the right to remove said improvements and all rights of said plaintiff- in said lot and improvements

determined and defendant compelled to attorn to the United States and take and occupy the same under said new lease executed to him by said receiver.

That defendant Toole held under said receiver until March 3rd, 1877, when the law under which said receiver was so appointed was, by act of Congress of that date, modified and repealed so far as to revoke the appointment of said receiver, and that from the eviction of said plaintiffs by said commission and the occupation by said Toole of said premises, and this defendant, as the purchaser of said Toole's improvements, from the 1st day of June, 1876, to the present time this defendant has been in continuous, open, and notoriour possession of said lot and improvements under claim of right and adversely to plaintiffs, a period of more than seven years next before the commencement of this suit; that plaintiffs abandoned all claim to the leased premises from and after the said decision of the supreme court, April 24th, 1876, until the passage of the act of March 3rd, 1877.

Defendant prays leave to exhibit so much of the said proceedings in said Court of Claims of the United States as may be necessary to show that plaintiffs were parties thereto, the subject-matter thereof, the final decision of ouster therein by the appointment of said receiver, the instructions to said receiver under said appointment, and the report of said receiver, the lease executed by him to defend-
22 ant, the petition of defendant filed before said commission, and the award thereon, together with the patent certificate issued to defendant in compliance with said award, and the disclaimer of William H. Gaines, contained in his testimony, which was filed with his petition before said commission, and pleads the same as a complete bar to all the pretences of claim in this cause on the part of plaintiffs.

And, as further bar to plaintiffs' pretence of claim in this cause, defendant states that the act of Congress approved June 16th, 1880, after the adjudication and award by said Hot Springs Commission and the filing of the map and survey, with the boundary lines of each claim clearly marked thereon, and the schedule showing the name of each claimant and the lot and parcel of land awarded to each, with the appraised value thereof, filed with the Secretary of the Interior and by him reported to Congress, was a statutory confirmation of the awards of said commission so reported and a legislative grant creating a conditional estate, conditional upon the payment of forty per cent. of the value so affixed to said lot by said appraisement to the person named in said schedule of the lots and parcels of land so awarded to each and returned in said findings and map; that by the findings and award of said commission and schedule, return, and map of said commission so piled and confirmed as aforesaid lot numbered nineteen, in block numbered seventy-seven, was adjudicated and granted to this defendant upon the payment to the United States by him of the sum of seventy-two dollars, and that subsequently, and within the time required by the act of Congress in that behalf provided, said defendant paid said sum of money to the officer and agent of the United States appointed to receive the

same, and received the patent certificate of the United States to said lot, in conformity with said award, return, and grant, and that between the date of said award and the passage of said act of 1880 and payment of said price no change in fact affecting the plaintiffs' right to said lot since said award and grant had occurred.

23 Defendant states that it is not true that plaintiffs paid taxes on said lot 19, in block 77, or upon defendant's improvements thereon; that by the laws of said State and the United States only the improvements on land supposed to be public land of the United States could be assessed for taxation by the State and county within which the same is situate, and said improvements were assessed to this defendant, who paid the taxes thereon and all the taxes ever paid upon said improvements, as the owner thereof, and upon the lot itself, since the issuance of said patent; and said defendant erected the improvements now standing and in his possession on said premises at a cost of about $4,000.00, with the knowledge and acquiescence of said plaintiffs; that from date of said award to defendant, October, 1879, plaintiffs have openly acquiesced in said award and actively opposed any and all efforts to set aside the same by judicial review or legislative action, and contributed money to pay agents for aiding in creating influences that would prevent the passage of a law or laws by Congress to dispute said awards, as the defendant is informed and believes, whereby defendant was led to consider himself secure in the title to said property under said patent of the United States, and has paid taxes, assessments, and impositions on said property which were, after issuance of said patent, assessed for State, county, and municipal taxes and impositions as other property in said State, and has been at great expense in filling up said lot and repairing said improvements.

And, further answering, this defendant saith that if the plaintiffs procured from said Albert, Henry, and George Belding the deeds mentioned in their said complaint, that said Albert, Henry, and George had nothing to convey by said deeds, and it does not appear from said complaints that said deeds were ever recorded, and said deed of Albert is *is* alleged to have been executed on the 20th of October, 1877, after the expiration of the time under which claimants might assert their rights to any part of said reservation under the act of 1877.

Said Belding heirs as such filed no petition for the right to
24 purchase lots on said reservation under said act of 1877 and were forever barred of all right or claim under said act.

It is true that plaintiffs, William H. and Maria Gaines, and defendant, within six calendar months after the organization of said board of commissioners, filed before them conflicting claims to said lot, and the testimony of the said Wm. H. Gaines, recited herein, was rendered in the course of the evidence in the trial of their respective rights before said commission upon said petition.

Defendant further saith that when said lease was made neither plaintiffs -or said heirs of Belding had possession of said lot; that the same was vacant and the title to it in the United States.

Defendant denies that said commission misconstrued the law and

awarded said lot to defendant when they should have awarded it to plaintiffs; that by reason of the improvements made thereon by defendants no right *in* which was ever acquired by plaintiffs by aoy right he might have had under said lease was terminated, as was shown by the laws and the testimony, and said commission awarded the said lot to defendant, as they should have done; that the allegations in said complaint that said lease contained a covenant by which the improvements of defendant were to be forfeited to plaintiffs is untrue, and plaintiffs utterly failed to prove the same; but if contained in said lease defendant was in no default, and that said lease was for an illegal purpose and void.

Defendant denies that the testimony take before said commission in the adjudication of the respective claims to said lot showed that defendant acquired possession of said lot solely under the lease of plaintiffs; but, on the contrary, he states the truth to be that said testimony showed that said lessee was induced to accept possession of the vacant ground of said lot by fraud and mistake in supposing said void entry gave plaintiffs title to the same, and — so induced to erect said buildings thereon, and that defendant was deprived of the possession thereof by the United States, decreed to have paramount title to said lot, without any collusion or procurement of defendant, and that by reason of said improvements so erected by defendant on said land of the United States, in which plaintiffs had no interest, — was entitled to the preference right to purchase the said lot at the price required to be paid therefor under said act of Congress of March 3rd, 1877, and said supplementary act of June 16th, 1880.

And defendant further saith that if there are other matters alleged in said complaint not herein expressly denied or admitted they are untrue.

Defendant states that he purchased all the right of said Michael W. Toole and Martha Toole in said lease and improvements, and they have no interest in this suit.

And, having fully answered, defendant demurs to said plaintiffs' complaint, and prays to have the benefit of his demurrer on the final hearing for the following causes:

1.

There is no equity upon the face of plaintiffs' complaint.

2.

Said complaint discloses a final adjudication of the matters in controversy by a tribunal clothed with full power to finally adjudicate the same.

3.

Said complaint is otherwise informal and insufficient.

Cross-Bill.

And by way of cross-bill said defendant, A. S. Garnett, saith that he is the owner of valuable improvements erected upon said lot, which cost in making and are of the value of four thousand dollars, and was the owner of said improvements at the entry of said lot in the United States land office and gra-ting of said patent certificate, as aforesaid, upon payment of said purchase-money, and has paid all taxes and assessments—State, county, and city—since the date of said purchase, amounting to five hundred dollars.

26 And should it turn out in proof and the court be of opinion that said entry was for the benefit of plaintiffs, then it was an entry of the improvements of this defendant, erected in the belief that this defendant had a good title to said lot under said award to land of the United States, and plaintiff did not institute said action within three years next before the commencement of this suit.

Wherefore he prays that he may be decreed against the plaintiff the full value of said improvements and his taxes and assessments so paid thereon and on said lot, and that the same be a lien on said lot until paid, and that he be discharged hereof with his costs.

JOHN M. HARRELL,
Solicitor for Defendant.

I certify that in my opinion the foregoing demurrer is well founded in point of law.

JOHN M. HARRELL,
Solicitor for Defendant.

STATE OF ARKANSAS, }
County of Garland. }

A. S. Garnett states that the demurrer to plaintiff's complaint is not interposed for delay and the foregoing pleas are true on point of fact, and he believes that the statements contained in his answer are true.

—— ——.

Subscribed to in my presence and sworn to before me this — day of ——, 1885.

—— ——.

(Endorsed:) Filed March 2nd, 1885. Ralph L. Goodrich, clerk.

27 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 12th day of April, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer,

circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 20th, 1886:

646. Comes the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by J. M. Harrell, their solicitor, and this cause is submitted to the court upon the pleadings and evidence, and by agreement of parties it is ordered that the complainants have fifteen days and the defendants thirty days thereafter in which to file abstracts, and thereafter the complainants to have ten days and the defendants ten days thereafter in which to file briefs, and that five days thereafter be given for reply. It is further ordered that each party serve upon the opposing party copies of abstracts and briefs.

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas *in and for the eastern district of Arkansas*, begun and holden on Monday, the 25th day of October, anno Domini one thousand eight hundred and eighty-six, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

28 On November 11th, 1886:

646. Come the complainants, by Benjamin and Davies, their solicitors, and come the defendants, by G. W. Murphy, their solicitor, and file herein their agreement; which agreement is as follows:

U. S. Circuit Court, Eastern District of Arkansas, October Term, 1885.

WM. H. GAINES and WIFE
vs.
A. S. GARNETT *et al.*

And all other cases in which Wm. H. Gaines and wife are plaintiffs to set aside patent upon the Hot Springs reservation of land, section —.

It is agreed that after the awards were made by the Hot Springs Commission that Wm. H. Gaines brought suit against Hot Springs and Garland counties for all taxes paid upon the S. W. ¼ of sec. 19, township 2 north, range 19 west, prior to the 24th day of April, 1876, by him or Belding heirs.

M. W. BENJAMIN,
Attorney for Belding Heirs.

(Endorsed:) Filed November 10th, 1886. Ralph L. Goodrich, clerk.

29 On the same day as follows:

646. Come the complainanms, by M. W. Benjamin, Esq., their solicitor, and come the defendants, by J. M. Harrell and G. W. Murphy, Esqs., their solicitors, and file herein their agreement as to depositions; which agreement is as follows:

In the Circuit Court of the United States for the Eastern District of Arkansas.

Wm. H. Gaines and Maria Gaines
vs.
M. W. Toole *et al.* } 646.

It is agreed that depositions in the above-entitled causes or either of them may be taken before any notary public after 1st April, 1875, at the office of J. M. Harrell, in Hot Springs, and read in evidence in all or any of the said causes on the hearing as far as relevant and competent, although not taken in terms in all of them; that the petitions filed before the Hot Springs Commission by plaintiffs and the several defendants or persons under whom they claim for the land involved in these several causes or the certified copies thereof may, as far as applicable and relevant, be read on said hearing by any of the parties, and that the certified copies of deeds annexed to defendants' answers or any of them are true copies and may be read also on the hearing without further proof of execution and without producing the originals; that proof as to the value of the improvements need not be taken until after the hearing, and that questions of the value of improvements shall in the cases in which the plaintiffs recover be after the hearing referred to.

(Signed) G. W. MURPHY, *Attorney,*
J. M. HARRELL, *Attorney,*
For Defendants.

30 (Signed) M. W. BENJAMIN,
Attorney for Plaintiffs.

(Endorsed:) Filed November 11th, 1886. Ralph L. Goodrich, clerk.

And on March 2nd, 1887, as follows:

646. Come the complainants, by M. W. Benjamin, their solicitor, and on his motion it is ordered that this cause be dismissed as to the defendants Michael W. Toole and Martha Toole.

And on same day as follows:

646. Now, on this day, this cause coming on for final hearing upon the complaint of plaintiffs, the answer of the defendant Algernon S. Gahnett, and the replication to said answer, and the evidence, and the court having heard the argument of counsel and being now sufficiently advised in the matter as to the proper decree to render herein, the court finds that the board of commissioners mentioned in the said complaint, by error and mistake of law, awarded the right to purchase lot nineteen (19), in block seventy-seven (77), of the Hot

Springs reservation, in the city of Hot Springs, in the county of Garland, State of Arkansas, to Michael W. and Martha Toole, who sold the same to defendant Algernon S. Garnett, who had notice of plaintiffs' claim to said lot, and issued to them, the said Michael W. and Martha Toole, a certificate of award, and that in accordance with said erroneous ruling a patent has been issued improperly to said Michael W. and Martha Toole, and the court is of opinion that said defendant, Algernon S. Garnett, holds said patent and deed of Michael W. and Martha Toole as trustee for the sole use of said William H. and Maria Gaines.

31 It is therefore considered, ordered, and decreed that all the right, title, and interest and estate of the said defendant, Algernon S. Garnett, in or to the said lot or tract of land be, and the same is hereby, divested out of said defendant, Algernon S. Garnett, and vested in said plaintiffs, William H. and Maria Gaines, and their heirs — assigns forever, and that said defendant, Algernon S. Garnett, do make, seal, and deliver a deed conveying said lot to said plaintiffs, their heirs and assigns forever; and said plaintiff prays an appeal, which is by the court granted.

And it is further ordered that this cause be referred to N. W. Cox, special master of this court, who is directed to ascertain and report to this court at its next term:

First. The value of the rent of said lot since the award of said commissioners.

Second. What amount of taxes has been paid by defendant, A. S. Garnett, since the said award by said commissioners.

Third. The value of the improvements made before and since the award of said commissioners, and report hereon separately.

And the said master may examine witnesses touching said matter, and shall use any testimony on file in said cause at the hearing and shall reduce the same to writing and report their testimony so taken to this court.

And it is further ordered that the plaintiffs do have and recover possession of said lot and do have and recover from defendant Garnett all the costs of suit herein, but no writ of possession to issue until the confirmation of said master's report; and it is further ordered that any questions of law touching the several matters herein referred to the master be, and the same are, reserved until the coming in of his report; and this cause is reserved for further directions.

32 And the court finds from the evidence adduced that the lot in controversy is at this date of the value of $7,000.00.

And on April 9th, 1887, as follows:

646. Comes N. W. Cox, Esq., master herein, and files his report; which report is as follows:

W. H. GAINES and WIFE
vs.
A. S. GARNETT. } 646.

Date of award, December 1st, 1879; date — filing bill, May 23rd, 1884. Lot 19, B. 77.

Rent, as per lease, $160.00 per annum and interest		$814 21
" from filing bill to master's report (18.4 ft.)		714 90
		$1,529 11
By taxes and int., as per report	$366 24	
" am't paid U. S. Governm't and int.	96 04	
" present improvements	1,450 00	
		$1,912 28
Diffenence		$383 17

N. W. COX, *Master.*

Am't rent, 540
7

12) 3,780

315 for 7 months.

33 In the U. S. Circuit Court, Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE, Plaintiffs,
vs.
ALGERNON S. GARNETT, M. W. TOOLE, *et al.*, Defendants. } 646.

To the honorable U. S. circuit court for the eastern district of Arkansas:

In accordance with the decree of this honorable court made in the above-entitled cause, as special master thereunder I have made examination of the matters and things therein directed. After the examination of the witnesses introduced by the parties, whose testimony I file herewith, I find:

First. That the rental value of lot 19, in block 77, the lot in controversy, without improvements, *to be* $12.50 per front foot per annum; that the frontage of the same is 18.4 ft., and the time from the date of the award to the first day of the April term, 1887, of this court, to which this report is made, is 7 years and 4 months, amounting to	$1,686 66
Interest on same (6 yrs. & 4 mos.), 6%	320 43
	$2,007 09

That the rental value of said lot, with improvements, *to be* $540 per annum for 7 yrs. and 4 months		$3,960 00
Second. That the taxes paid by defendant Garnett, as per certificate of clerg of Garland county, sewer and sidewalk assessments and city taxes for 1881, amounted for six years	$351 09	
Discounts on scrips	35 80	
		315 29
Interest on taxes ($283.09)		50 95
		$366 24

34 That defendant paid the U. S. Government for said lot		$72 00
Interest on same from Jan'y 1st, '82		34 04
		$96 04
Third. That the value of the improvements put upon said lot before the award, there being no evidence to the contrary		2,000 00
That the same *is* worth now		1,450 00

Respectfully submitted,

N. W. COX,
Special Master.

Depositions of witnesses in the case of William H. Gaines and Maria Gaines, plaintiffs, against A. S. Garnett, M. W. Toole, *et al.*, defendants, before N. W. Cox, special master, appointed by the U. S. circuit court for the eastern district of Arkansas for that purpose, in the city of Hot Springs, on the 17th day of March, 1887, to be read in said cause, pending in said court.

Present: The plaintiffs, by R. G. Davies, Esq., their attorney, and the defendants, by John M. Harrell, Esq., their attorney.

ALBERT B. GAINES, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, and residence.

Ans. A. G. Gaines; age, 29 years; residence, Hot Springs.

Ques. 2. Are you familiar with the rental value of property in the neighborhood of lot 19, in block 77, in the city of Hot Springs, since the award of the commissioners, in 1879?

Ans. I am. I have been renting property in that vicinity since 1877.

Ques. 3. What is a reasonable rental value of that lot during that time, with the improvements and without the improvements, said lot being 18 ft. in width and 90 ft. in depth?

35 Ans. With the improvements, $50 per month; without improvements, $15 per front foot per annum.

ALBERT B. GAINES.

JOHN D. WARE, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, and residence and occupation.

Ans. My name is John D. Ware; age, 35 years; residence, Hot Springs; occupation, real-estate and insurance agent.

Ques. 2. Are you familiar with the rental values of property on Central avenue since the award of the Hot Springs Commission?

Ans. I am to some extent; I have had some rents to collect, and it has otherwise come under my observation.

Ques. 3. Have you a general knowledge of what a lot situated as lot 19, in block 77, city of Hot Springs, 18.4 feet front by 90 feet in depth, with a house upon it, 16 feet wide by 90 feet in depth, two stories, would rent for during said time—that is to say, the market value; and, if so, what would it be?

Ans. The rental value of lot 19, in block 77, is now worth $45 per month with improvements.

Ques. 4. Can you state what would be a rental value per front foot for the ground of a lot 19 feet front by 90 feet deep, during that time, in that locality, as a ground rent, without any improvements upon it?

Ans. I think it would be worth 2% upon whatever the land and improvements would bring. By taking off the improvements and calculating the ten per cent. upon the value of the land would be its rental value. I astimate that ground to be worth at present $200 per front foot—say $15 per front foot.

Ques. 6. Have you sold any property or had any offer to buy property in that immediate neighborhood; and, if so, at what price?

Ans. We sold lot 6, in block 77, for $6,000. We have had
36 offers for lot 21, in said block, at $200 in cash per front foot, and we made that offer to the owner and he refused it.

JOHN D. WARE.

O. F. SMITH, being introduced upon the part of the plaintiffs and duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is O. F. Smith; age, 49 years; residence, Hot Springs; occupation, real-estate and loan agent.

Ques. 2. How long have you been in the real-estate business in Hot Springs?

Ans. I went into business four years ago last June.

Ques. 3. Are you familiar with the rental values of property on Central avenue, in the city of Hot Springs, during that time, in the vicinity of lot 19, in block 77, with a house upon it, — feet wide and — feet deep, two stories high, and what would it rent for during that time—that is to say, the market value; and, if so, what would it be?

Ans. My information is that such a building and said lot would rent for about $480 per year. I place it at $480, to be safe, for it might be vacant some part of the time, and it might rent for more.

Ques. 4. Can you state what would be a reasonable rental value

per front foot for the ground of said lot 19, block 77, during said time, in that locality, as a ground rent, without improvements?

Ans. I should say about $13 or $14 per front foot.

O. F. SMITH.

U. M. SLOAN, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is U. M. Sloan; age, 49 years; residence, Hot Springs; occupation, carpenter and builder.

37 Ques. 2. How long have you been in the business?

Ans. About twenty years; in Hot Springs for the last nine years.

Ques. 3. Have you made an estimate on the value of the improvements upon lot 19, in block 77, in the city of Hot Springs? And, if so, state what it is, and what said improvements would be worth to move off of the lot.

Ans. Yes; I estimate the value when made at $2,000; now, $1,00–; to move the improvements off the lot they would be worth about $500. Mr. Bray and myself made the estimate together and we agree in our estimates.

U. M. SLOAN.

GEORGE W. PRAY, being introduced upon the part of the plaintiffs and first duly sworn, deposes and says:

Ques. 1. State your name, age, residence, and occupation.

Ans. My name is George W. Bray; residence, Hot Springs; age, 36 years; occupation, carpenter and builder.

Ques. 2. How long have you been in the business?

Ans. About 17 years; in Hot Springs the last six or seven years.

Ques. 3. Have you made an estimate on the value of the improvements upon lot 19, in block 77, in the city of Hot Springs? And, if so, state what it is, and what said improvements would be worth to move off of the lot.

Ans. Yes; I estimate the value when made at $2,000; now, $1,900; that to move off they would be worth about $500. I made these estimates in connection with Mr. Slo*na* and we agree in our estimates.

GEO. W. BRAY.

Please estimate and include the sidewalk and sewer assessments as we did in other cases; also amount paid Government. The appraisement and price paid, at 40 % of appraisement, were as follows:

Lot 11, block 77, app. $380; price	$152
" 12, " 77, " 380; "	152
Total for the two lots	$304

38 In lot 19, block 77, app. $18¼; price, $72.

I will be very much obliged if you consider these statements in your report and render it unnecessary for me to ask the court. I was very sick and not able to get up the testimony when you were present.

Very respectfully, JOHN M. HARRELL,
Attorney for A. S. Garnett.

In U. S. Circuit Court, East. District of Arkansas.

WM. H. GAINES and WIFE, Plaintiffs, *vs.* A. S. GARNETT *et al.*, Defendants. } Testimony Before Master.

A. P. ALDRICH states on oath that he is a citizen of Garland county, Arkansas; 48 years of age, resident of the city of Hot Springs, and by occupation contractor for excavations and stone-work; has been engaged in making excavations and stone-work for buildings and on Government work during the last two years, at said city of Hot Springs; has been called upon in said contracts to make estimates of work and dirt to be removed in various localities in said city during that time.

On the 28th March, 1887, I fully examined the excavations made upon lots eleven and twelve, in block 77, in said city, on the premises of A. S. Garnett, the above-named defendant, at rear of what was known as the old "court-house building." By measurement I found the excavation at the rear was on an average 10½ vertical feet (from top to bottom) of excavation and 36 feet wide, extending in a westerly and southerly direction, and 33 feet back of the rear wall of the buildings now standing on said lot, said excavation having been made in solid rock and by blasting with powder. I estimate the amount of rock excavated and removed at 334 cubic yards, and cost to remove $1 per cubic yard. It could not have been done for less. I did no work on this job myself, but did work in the same bank or hill and excavated and removed the same formation and re-
39 ceived $1 per cubic yard for the work I did. I did similar work at other points, for which I received the same price. That part of the improvements consisting of said excavation was necessary to make a site for said building when the street was widened, by order of the commission, and the buildings were removed to the rear, with a space for contemplated extension of the building- to make them adaptable to business purposes, and worth at lowest estimate $334. This estimate does not include any excavation made for a site for the said buildings when first erected, for which some excavation was evidently made. The embankment at rear of the house as it now stands, after being removed back, was excavated to a depth of 4 feet, the width of said lots, viz., 20 feet. The cost of excavation up to that embankment removed for placing the building back is not included in my estimate.

S. P. ALDRICH.

P. J. LEDWIDGE testified on oath that he is a resident of the city of Hot Springs, Garland county, Arkansas; about 44 years old, and

by occupation contractor and builder; has been engaged in contracting and building houses in said city for about thirteen years and is familiar with the cost of building materials and work at said city during said time. I have this day examined and measured the buildings on what was known as the old court-house property, on the claim of Dr. A. S. Garnett, and estimate the original cost of erecting said buildings—at a rough estimate—at $1,600, and estimate said buildings to be worth, as they now stand, for business purposes, $1,000. They are tenable, are occupied for business purposes at this time, and will stand five or six years. The front measurement of said buildings on Central avenue, including the outside staircase, by actual measurement, is 46 feet and depth or extension back 42 feet. The north part of the building, being two stories high, contains rooms and offices upstairs, the south part being only one story high, with a frontage of about 16 feet.

P. J. LEDWIDGE.

40 WILLIAM H. MOYSTON states on oath that he is county clerk of Garland county, Arkansas, and custodian of the tax-lists of said county, and that the same, remaining in my office, show that the following taxes, county and State, for the year- 1881, 1882, 1883, 1884, 1885, and 1886 and city taxes for the city of Hot Springs for each of said years, except the years 1881 and 1882, upon lots eleven and twelve, in block 77, city of Hot Springs, and upon lot nineteen, in said block, were paid according to the annexed tablets, to wit:

On lots 11 and 12, in block 77, Hot Springs, Ark.:

$2 \times 16 \times 8 \times 4 \times 20 \times 20$,	valued at $2,000.00	each,	taxes on lot,	1881	$70 00
$2^{50} \times 20 \times 10 \times 5 \times 25 \times 25$,	" 2,500.00	"	"	1882	87 50
$2^{04} \times 5^{04} \times 24^{32} \times 12^{16} \times 30^{40} \times 30^{40}$,	" 3,040.00	"	"	1883	133 76
Do.,	" 3,040.00	"	"	1884	133 76
$12^{16} \times 12^{16} \times 30^{40} \times 30^{40} \times 30^{40}$,	" 3,040.00	"	"	1885	115 52
$12^{16} \times 12^{16} \times 18^{24} \times 30^{46} \times 30^{40}$,	" 3,040.00	"	"	1886	115 52
To bal. taxes paid on said lots 11 and 12, five years					$656 06

On lot 19, in block 77, Hot Springs, Ark.:

$70 \times 5^{60} \times 2^{80} \times 1^{40} \times 7^{00} \times 7^{00}$, valued at $1,400.00, taxes assessed and paid, 1881	$24 50
$175 \times 14^{00} \times 7^{00} \times 3^{50} \times 17^{50} \times 17^{50}$, valued at $3,500.00, taxes assessed and paid, 1882	61 25
$135 \times 1^{08} \times 8^{64} \times 4^{72} \times 10^{80} \times 10^{80}$, valued at $2,160.00, taxes assessed and paid, 1883	47 52
$128 \times 1^{08} \times 8^{64} \times 4^{72} \times 10^{80} \times 10^{80}$, valued at $2,160.00, taxes assessed and paid, 1884	47 52
$4^{20} \times 4^{20} \times 10^{50} \times 10^{50} \times 10^{50}$, valued at $2,100.00, taxes assessed and paid, 1885	39 90
$4^{20} \times 4^{20} \times 4^{20} \times 6^{30} \times 6.30 \times 10^{50} \times 10^{50}$, valued at $2,100.00, taxes assessed and paid, 1786	39 9½
Tatal taxes paid on lot 19, block 77, five years	$260 59

The amount paid by Dr. Garnett on lots 11 and 12, in block 77, to date is $656.06, and lot 19, in same block, to date is $260.59.

W. H. MOYSTON, *Clerk.*

A. P. ALDRICH says that, in addition to the statement first made by him herein, he *states that he* this day examined and made an estimate of the cost and value of the excavation made in the
41 rear of lot 19, in block 77, and that there were 334 cubic yards of rock taken out of the rill in making said excavation, and that the same was worth $1 per cubic yard.

A. P. ALDRICH.

STATE OF ARKANSAS, }
County of Garland. }

I, W. A. Kirk, a notary public within and for the county of Garland and State of Arkansas, do certify that W. H. Moyston, P. J. Ledwidge, and A. P. Aldrich have been duly sworn by me to the following and annexed statements as herein set forth, and I do so certify.

W. A. KIRK.

[SEAL.]

(Endorsed:) Filed April 9th, 1887. Ralph L. Goodrich, clerk.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Know all men by these presents that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 11th day of April, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Hona. David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On May 7th, 1887:

646. Comes A. S. Garnett, by John M. Harrell, Esq., his solic-
itor, and files herein his exceptions to report of master;
42 which exceptions are as follows:

In United States Circuit Court, the Eastern District of Arkansas.

WM. H. GAINES and WIFE, Plaintiffs, } 646.
vs.
M. W. TOOLE and WIFE and A. S. GARNETT, Defendants. }

Exceptions to Master's Report.

Comes the said A. S. Garnett and excepts to the report of N. W. Cox, special master herein, upon the following grounds:

I. Because said report finds and charges defendant with the rent of the lot of ground in controversy for seven years and four months from the date of the award of the Hot Springs Commission to said defendant Toole, and also for interest on said supposed rent for six years and four months.

Defendant submits that if such rent was payable because of the trust relation under the award to Toole and purchased from the

United States by Garnette it did not commence until the entry and purchase at the U. S. land office, but that, under the law of Arkansas (Mansfield's Digest, sect. 2637), in a recovery obtained by virtue of an entry at a land office in this State rents and profits cannot be adjudged upon improvements of defendant on land of the United States.

It is further submitted that the plaintiffs cannot recover interest upon rent that may be due under a trust relation, in view of the circumstances shown. Defendant would be better entitled to have interest on the money invested by him in the improvements, which enhanced the value of said lot and adjacent ground of plaintiffs.

II. The finding as to rental value in said report is in excess of that reserved in the original lease exhibited with plaintiffs'
43 —; is speculative, exorbitant, making no allowance for the restricted term, the long continuous occupancy following necessarily from the action of the plaintiffs and the purchase of the improvements on land as land of the United States, the acquiescence of plaintiffs and delay to except to said award under the act of 1877.

GGG. No rent was demanded or expected by plaintiffs from date of the decree of the *SU* Supreme Court declaring title in the United States until the commencement of this action, if then, and under the laws of Arkansas, Mansfield's Digest, section 2646, no account of rent and profits should be allowed which accrued after such eviction of plaintiffs and more than three years next before the commencement of this suit.

IV. The findings as to rent value of lot "with improvements" and "the present value of improvements" were not ordered to be ascertained by said master and are not proper subjects of inquiry in this action.

V. Said report is otherwise defective, unreliable, partial, and against the law and evidence adduced before said master, irresponsive and unauthorized by the order of reference.

Wherefore defendant prays judgment that the said report be set aside; that a new reference be ordered and account taken and allowances made definitely.

A. S. GARNETT,
By his attorney, G. M. HARRELL.

(Endorsed:) Filed May 7th, 1887. Ralph L. Goodrich, clerk.

And on the final hearing the following depositions and proofs were read:

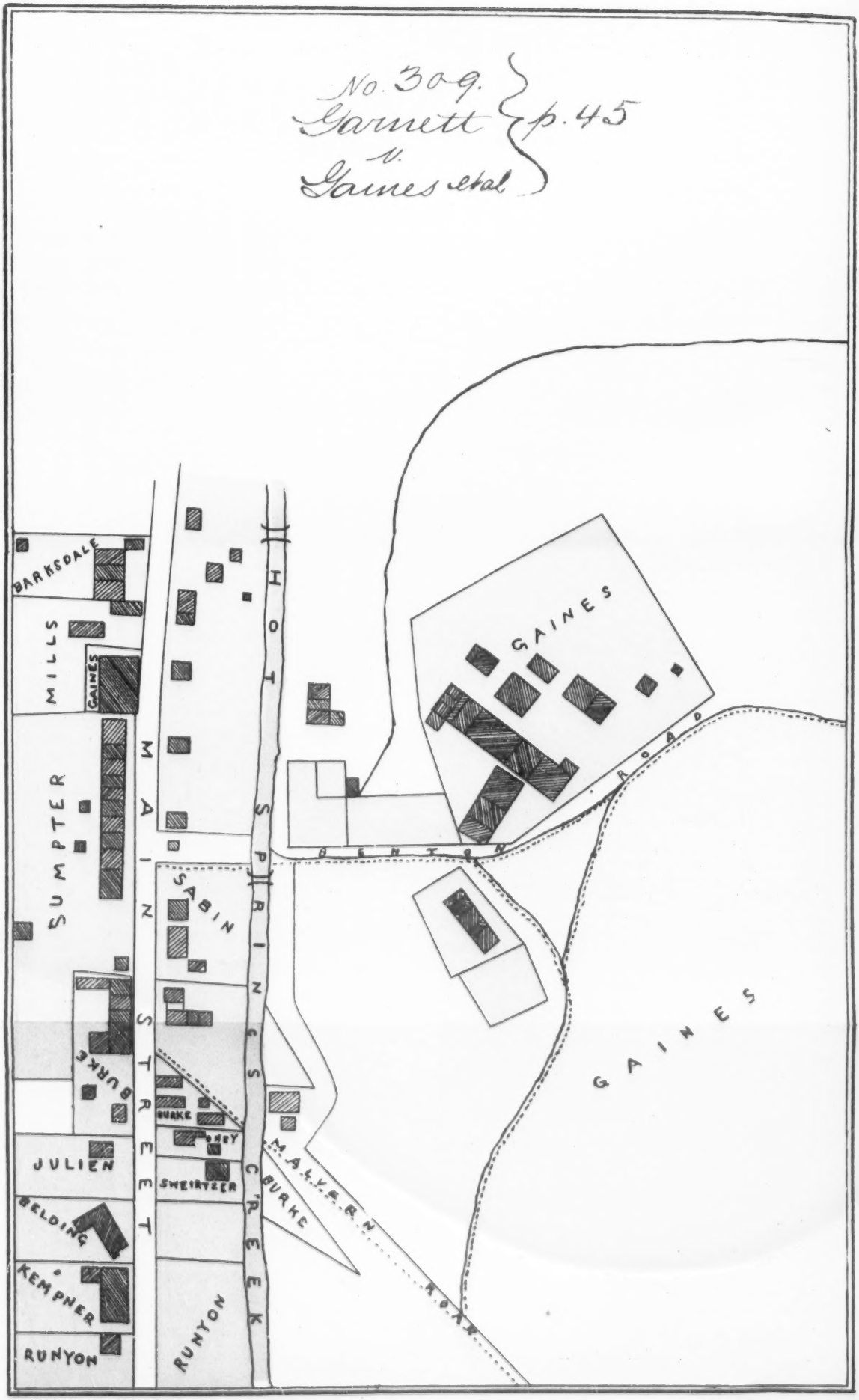
(Here follow three maps marked pp. 44, 45, & 46.)

W. H. Gaines'

CLAIM

MAP A

No. 309.
Garnett v. Gaines et al } p. 45



MAP SHOWING OLD IMPROVEMENTS

47 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., —— —, 188–.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 784, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications from the originals on file or on record in this office.

United States General Land Office Seal.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

[Endorsed:] No. 784. Hot Springs Commission. Petition of William H. and Maria Gaines. Filed Octo. 26th, '77. J. W. Anderson, cl'k H. S. com'rs.

48 UNITED STATES OF AMERICA:

Hot Springs Commission.

In the Matter of the Claim of WILLIAH H. GAINES and MARIA GAINES.

To the Hot Springs commissioners:

Your petitioners, William H. Gaines and Maria Gaines, now both in their own right, and for over twenty-five years residing at Hot Springs, in the State of Arkansas, upon the premises herein claimed, represent that they claim the following-described tract of land, a map of which is filed herewith and made a part hereof, marked Exhibit "A," situated in the Hot Springs reservation, which tract is bounded as follows, to wit: On the north by the Hot Springs Mountain reservation, with a line bearing as follows: S. 82° E. 260 feet, S. 12° 11′ E. 270 feet, N. 77° 43′ E. 680 feet, and N. 65° 03′ E. 586.3 feet, N. 88° 11′ E. 220 feet, N. 60° 19′ E. 500.1 *foot*, N. 44° 01′ E. 590 feet to ¼-sec. line between S. E. ¼ and S.W. ¼ of sec. 33, T. 2 S., R. 19 west; thence on the east by said line 1,325 feet south; thence
49 on the south by the township line between T. 2 S. and T. 3 S., being south line of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., running west 2,640 feet; thence to sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in R. 19 W.; thence on the west by the sec. line between secs. 32 and 33, T. 2 S., R. 19 W., 1,320 feet, running north to place of beginning, lying and being in the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, except the following-described lands, a map of which is filed herewith and made part hereof, marked Exhibit "B," which lands your petitioners have sold and given to the following parties, to wit: Given to the Methodist Episcopal church the following lands: Commencing at a point 60 ft. N. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3

S., all in R. 19 W., thence bearing S. 83° east one hundred and forty feet; thence N. 7° E. fifty (50) feet; thence N. 83° W. 150 feet; thence south 51 feet to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Frank Horton the following lands: Commencing at a point N. 33° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and sect's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 305 ft., thence bearing south 84° E. 120 ft.; thence S. 6° E. 24 ft.; thence N. 84° E. 120 ft.; thence N. 6° E. 24 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian.

50 Sold to Joseph Molen the following lands: Commencing at a point N. 35° 30′ W. of centr- subdivision stake on line bet. S. W. ¼ sec. 33, T. 2 S., and N. W. ¼ sec. 4, T. 3 S., R. 19 W., and distant therefrom 630 ft., thence bearing N. 29° 30′ W. 200 ft.; thence S. 60° W. 100 ft.; thence S. 29° 30′ E. 200 ft.; thence N. 60° E. 100 ft. to point of commencement, lying and being situate in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Sold to Thomas Secoy the following lands: Commencing at a point N. 87° 30′ W. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 640 ft., thence bearing S. 37° 20′ E. 110 ft.; thence N, 81° 50′ E. 51 ft.; thence N. 37° 20′ W. 120 ft.; thence S. 60° W. 50 ft. to place of beginning, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to James Ritchie the following lands: Commencing at a point N. 35° E. of centre subdivision stake on line bet. S. W. ¼ of sec. 33, T. 2 S., and N. W. ¼ of sec. 4, T. 3 S., all in range 19 W. and distant therefrom 720 ft., thence bearing N. 60° E. 100 ft.; thence S. 29° E. 250 ft.; thence S. 43° W. 105 ft.; thence N. 29° W. 285 ft. to point of commencement, lying and being in S. E. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian.

51 Sold to C. S. Williamson the following lands: On the north by the old Benton road, with a line bearing N. 60° E. 150 ft; thence on the east by the claim of Julia S. Carhart and D. Carey, with a line bearing S. 29° 30′ E. 430 ft.; thence on the south by Gaines avenue, with a line bearing S. 60° W. 150 ft.; thence on the west by the claim of Wm. H. Gaines, with a line bearing N. 29° 30′ W. 430 ft. to place of beginning, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to I. W. Carhart the following lands: Commencing at a point N. 60° E. of centre subdivision stake on line between S. W. ¼ of sec. 33, T. 2 S., and N.W. ¼ of sec. 4, T. 3 S., R. 19 W., and distant therefrom 735 ft., thence bearing N. 29° 30′ W. 230 ft., thence N. 60° E. 190 ft., thence S. 69° 51′ E. 480 ft., thence S. 29° 30′ E. 95 ft., thence S. 61° W. 400 ft., thence N. 29° 30′ W. 200 ft., thence S. 60° W. 100 ft. to point of commencement, lying and being in the S. E. ¼ of the S. W. ¼ of sec. 33, T. 2 S.,

R. 19 W., all the above bearings being read from the magnetic meridian. Given to Sarah Flowers the following lands: Commencing at a point N. 23° 10′ east of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 W., and distant therefrom 505 ft., thence bearing N. 82° 15′ E. 72 ft., thence S. 7° 45′ E. 22½ ft., thence S. 82° 15′ W. 72 ft., thence N. 7° 45′ W. 22½ ft. to point of commencement, lying and being in the
52 S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 west, all the above bearings being read from the magnetic meridian. Given to Fannie Williamson the following lands: Commencing at a point N. 83° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 740 ft., thence bearing N. 40° W. 300 ft., thence S. 55° W. 40 ft., thence N. 40° W. 40 ft., thence S. 55° W. 70 ft., thence S. 23° E. 280 ft., thence N. 75° E. 200 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Given to Mary P. Gaines the following lands: Commencing at a point N. 21° 5′ E. of sec. cor. post for sect's 32 and 33, T. 2 S., and sect's 4 and 5, T. 3 S., all in range 19 west and distant therefrom 537 ft., thence bearing N. 79° E. 72 ft., thence S. 11° E. 41½ ft., thence S. 79° W. 72 ft., thence N. 11° W. 41½ ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to Wm. H. Nelson the following lands: Commencing at a point N. 28° E. of sec. cor. post for secs. 32 and 33, T. 2 S., and secs. 4 and 5, T. 3 S., all in range 19 west and distant therefrom 680 feet, thence bearing N. 58° E. 200 ft., thence N. 35° W. 135 ft., thence S. 75° W. 120 ft., thence 86° W. 170 ft., thence S. 75° E. 45 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above
53 bearings being read from the magnetic meridian. Given to the Protestant Episcopal church the following lands: On the north by the claim of Wm. H. Gaines, with a line running N. 80° E. 65 ft.; on the east by the Gaines claim, with a line running S. 18° E. 70 ft.; on the south by the claim of S. W. Fordyce, with a line running N. 18° W. 108 ft.; thence N. 80 E. 50 ft.; thence S. 18° E. 20 ft. to the place of commencement, all the above bearings being read from the magnetic meridian.

Given to Kate McGrath the following lands: Commencing at a point N. 9° 30′ E. of sec. cor. post for secs. 32 and 33, T. 2. S., and sec-. 4 and 5, T. 3 S., all in range 19 W. and distant therefrom 647 feet, thence bearing south 79° 30′ W. 102 ft., thence S. 10° 30′ E. 50 ft., thence N. 79° 30′ E. 102 ft., thence N. 10° 30′ W. 50 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to George W. Baxter the following lands: Commencing at a point S. 12° 40′ E. of ¼-sec. post fret. sec'ts 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,492 ft., thence bearing south 85° 45′ W. 65 ft., thence S. 40° 15′ E. 12½ ft., thence N. 85° 45′ E. 65 ft., thence N. 40° 15′ W. 12½ ft. to point of com-

mencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the
54 magnetic meridian. Sold to B. W. Goode the following lands: Commencing at a point 13° 5′ E. of ¼-sec. post bet. secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,420 ft., thence bearing S. 85° W. 100 ft., thence S. 50° E. 20 ft., thence N. 85° E. 100 ft., thence N. 50° W. 20 ft. to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Sold to G. L. Wilson the following lands: Commencing at a point S. 12° 20′ E. of ¼-sec. post between secs. 32 and 33, T. 2 S., R. 19 W., and distant therefrom 1,380 ft., thence bearing S. 89° 50′ W. 100 ft., thence S. 0° 10′ E. 35 ft., thence N. 89° 50′ E. 100 ft., thence N. 0° 10′ W. 35 feet to point of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Given to Albert Gaines the following lands: On the N. by the Hot Springs hotel property, the claim of W. H. Gaines, with a line bearing north 76° 30′ E. 50 ft.; thence on the east by Hot Springs creek, with a line bearing south 13° 30′ E. 63 ft.; thence on the south by the claim of Gordon, with a line bearing S. 75° W. 50 ft.; thence on the west by Valley St., with a line bearing N. 13° 30′ W. 62 ft. to point of beginning, including the office of A. K. Taylor, the entrance to Gaines' cottage, and the building occupied by Mr. Lemen, lying and being in the S. W. ¼ of the N. W. ¼ of sec. 33,
55 T. 2 S., R. 19 W.; also the following-described land: On the north by the claim of J. J. Sutton, with a line bearing N. 79° 30′ E. 185 ft.; thence on the east by Valley St., with a line bearing S. 10½° 20 ft.; thence on the south by the claims of Ellen McMurray, with a line bearing S. 79° 30′ W. 185 ft.; thence on the west by the section line bet. sect's 32 and 33, T. 2 S., R. 19 W., and the claim of J. J. Sumpter, with a line bearing N. 10° 30′ W. 20 ft. to place of beginning, lying and being in the S. W. ¼ of S. W. ¼ of sect'n 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian. Gave to Augustus L. Stitt the following lands: On the N. by the claim embracing the Garland house, with a line bearing N. 60° 45′ E. 80 ft.; thence *thence* on the east by the claim of the Peoria house and cemet-ry, with a line bearing S. 10° E. 140 ft.; thence on the S. by Malvern road, with a line bearing S. 60 W. 30 ft.; thence on the W. by the Malvern road, with a line bearing N. 32 W. 140 ft. to place of beginning; also the following: On the N. by the old Benton road, with a line bearing N. 60° E. 300 ft.; thence on the east by the claim of Jos. Molen, with a line bearing S. 26° E. 160 ft.; thence on the south by the cemet-ry, with a line bearing S. 69° W. 180 ft. and N. 81° W. 110 ft. and S. 77½° W. 32 ft.; thence on the west by an alley fronting the Peoria house, with a line bearing N. 14° W. 50 ft. to place of beginning, lying and being in
56 the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being taken from the magnetic meridian. Sold to James Mingovan the following lands: Commencing at a point S. 17° W. of centre subdivision stake on line bet. S. E. ¼ and

S. W. ¼ of sec. 33, T. 2 S., R. 19 W., and distant therefrom 500 ft., thence bearing north 24° W. 475 ft.; thence S. 770 ft., W. 300 ft.; thence S. 35° E. 420 ft.; thence S. 88° 45 E. 250 ft. to point of commencement, lying and being in the S. W. ¼ of S. W. ¼ of sec. 33, T. 2 S., R. 19 W., all the above bearings being read from the magnetic meridian; all of which lands thus sold or given away they set up no claim to; that the following improvements are situate upon the premises claimed by your petitioners, namely, four hotels, fifty-three stores, saloons, and restaurants and two livery stables, one planing mill, one woolen factory and four dwelling-houses, and various stables, cribs, wells, fencing and other improvements usual about hotels, storehouses, livery stables, and dwelling-houses; that the same were erected by your petitioners and their agents and tenants under contracts made with your petitioners previous to April 24th, 1876; that they are of the value of one hundred and fifty thousand dollars.

Your petitioners further say that they claim to be the owners
57 of the said premises and entitled to again purchase the same from the United States upon the following grounds, to wit: That in 1839 Lydia Belding made application as the widow of Ludixocus Belding to the proper United States land office to purchase the whole of the southwest quarter of section (33) thirty-three, in township two (2) south and range (19) nineteen west of the fifth principal meridian, a copy of which application is hereto attached and made part hereof, marked Exhibit "C;" that said Lydia Belding some time after she had made said application transferred her right to her children, Maria Gaines, wife of Wm. H. Gaines, and Albert Belding, George Belding, and Henry Belding, a copy of which relinquishment and transfer is hereto attached and marked Exhibit "D," and after a full examination of said application to enter and purchase said quarter section of land, the Secretary of the Interior, on the 21st day of November, 1851, instructed the commissioner of public lands to permit the heirs and legal representatives of Ludovicus Belding to enter and purchase said lands; that in pursuance of said order from the then Secretary of the Interior the commissioner of public lands instructed the register and receiver of the United States land office at Washington, in the State of Arkansas, to permit the heirs and legal representatives of said Ludovicus Belding to enter and
58 purchase said quarter section of land, and, in pursuance of said instruction, Maria Belding, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, on the 19th day of December, 1851, made application in the name of said heirs and legal representatives of said Ludovicus Belding to the said register and receiver at said land office at Washington, Arkansas, which land office was the proper land office for entering said land, a copy of which application is hereto attached and marked Exhibit "E," and prayed to be taken as a part hereof, and upon said application the said register and receiver permitted said Maria Gaines, wife of Wm. H. Gaines, Albert Belding, Henry Belding, and George Belding to enter and purchase the southwest quarter of section (33) thirty-

three, in township two (2) south, range (19) nineteen west, and said heirs and legal representatives did then and there enter and purchase said quarter section from the United States, and did then and there pay the United States the sum of two hundred dollars for said quarter section, that being the maximum price charged by the United States for her public lands. Said two hundred dollars were paid and advanced by Wm. H. Gaines, the husband of said Maria Gaines, late Maria Belding, and upon the payment of said
59 sum of money said heirs and legal representatives did, on the 19th day of December, 1851, receive from B. F. Hempstead, the duly authorized receiver of the United States land office at Washington, Arkansas, a patent certificate for said land, a copy of which is hereto attached, marked Exhibit "F," prayed to be taken as part hereof. The original is in the possession of your petitioners and subject to the order an- inspection of the honorable board of commissioners.

Your petitioners respectfully show and aver that by virtue of said entry and purchase and patent certificate therefor they were by the laws of the State of Arkansas and the laws of the United States legally entitled to have the possession and control of the whole of said quarter section of land thus entered and paid for, subject only to the rights of the United States Government; that notwithstanding the legal title still remained in the United States after said entry and purchase and the issuance of said patent certificate, still they by reason of said entry and purchase and the patent certificate issued therefor acquired an equitable estate in and to said quarter section, an estate that by the laws of the State of Arkansas and of the United States *were* hereditable, devisable, and assignable, so your petitioners aver that from the 19th day of December, 1851, to and including the 24th day of April, 1876, they not only had a legal right
60 in and to the possession of the premises herein claimed, but they had a legal right recognized by the laws of the State of Arkansas and by the United States to devise, sell, or lease the whole or any portion of said premises; that your petitioners' possession, more particularly hereafter set forth, was not the possession of a trespasser or a squatter on the public lands, but was a peaceable, lawful, and rightful possession under the laws both of the State of Arkansas and of the United States, and that the sales and leases are not the sales and leases of a trespasser or squarter upon the public lands, but were the sales and leases of parties legally in possession, and your petitioners are advised and aver the fact to be that all sales and all leases made by parties rightfully and legally in possession have always been recognized, countenanced, and held to be valid by both the courts of the State of Arkansas and of the United States as between the vendor and vendee and lessor and lessee and their privies.

Your petitioners show unto your honors that when they paid for and received said patent certificate they were not in possession of any portion of said quarter section of land, and that your petitioners recovered possession *to* a large and the most valuable portion of the premises now claimed by your petitioners through the courts

of the State and the Supreme Court of the United States
61 an account of the legal right to the possession and control of the lands and premises which your petitioners now claim.

Your petitioners respectfully show that at the time of said entry the northeast quarter of said quarter section was unoccupied, and the same is now included in the Hot Springs Mountain reservation, except about three acres in the southeast corner of said northeast quarter, which three acres, more or less, had been in the lawful possession of your petitioners for more than twenty years previous to April 24, 1876; the same was previous to that time fenced and improved by your petitioners. Your petitioners make no claim to any of said northeast quarter of the said southwest quarter, except said three acres, more or less, on the south of said new reservation. The northwest quarter of said southwest quarter, when entered as aforesaid, was, with the exception of some of the hot springs that are now included in the Hot Springs Mountain reservation, in the possession of John C. Hale and Henry M. Rector and other parties. Your petitioners recovered judgment against John C. Hale for the possession of so much of said northwest quarter of said southwest quarter as was occupied by him, and said judgment was affirmed by both the supreme court of the State of Arkansas and
62 of the United States, and also recovered judgment for possession against Henry M. Rector and others for the portion of said northwest quarter of said southwest quarter occupied by them; which judgments were affirmed by the supreme court of the State of Arkansas and of the United States, and, after said judgments were recovered and affirmed as aforesaid, said Hale and said Rector filed a bill in equity setting up an equitable title to said land and enjoining the execution of the judgment at law; which last suit was still pending in the United States Supreme Court on the 24th day of April, 1876, so that your petitioners never in fact had actual possession of said northwest quarter of said southwest quarter, and they do not now set up any claim to the same. The southeast quarter of said southwest quarter at the time of said entry was unoccupied, with the exception of about ten acres thereof in the southwest corner of said southeast quarter, which was cleared and fenced and in cultivation and occupied by Abigal Sabin, who soon afterwards married a Mr. Du Pas. Your petitioners, being willing to pay said Abigal Sabin as well as all others for the improvements that they had made, bought out said Abigal Sabin's claim, and she delivered the possession to your petitioners, and your
63 petitioners have remained in possession and control of said field ever since, and were in possession of the same on the 24th day of April, 1876. Your petitioners, after purchasing and paying for said improvements, afterwards took actual possession of the remainder of said southeast quarter of the southwest quarter and cleared off and fenced and improved the same, and was in continued possession of the same for more than twenty years previous to the 24th day of April, 1876, with exception of a small portion sold off to other parties which is hereinbefore set forth, and with the further exception of a few lawless trespassers whose tres-

passes will be hereafter set forth. Nearly all of the southwest quarter of the southwest quarter at the time of said entry was in the possession of Abigal Sabin, Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, Richard Puckett, Edward Mills, Jacob Sweiptzer, Samuel and Oney Macklin, Harrison D. Flowers, and E. G. Malone.

Abigal Sabin had at that time about ten or fifteen acres in the southeast corner of said southwest quarter cleared, fenced, and in cultivation, which, together with land adjoining that in the southwest corner of the southeast quarter of said southwest quarter, made a field from twenty to twenty-five acres, and said
64 Abigal had in addition thereto a small field between said field and Hot Springs mountain of about two acres, and had a lot of houses and stables about where the present residence of your petitioners is, all of which your petitioner, Wm. H. Gaines, bought of said Abigal Sabin and for which he paid the sum of seven hundred dollars, as will more fully appear by reference to a copy of Abigal Sabin's or Du Pas' agreement and receipt therefor, which is hereto attached and marked Exhibit "G," prayed to be taken as a part hereof; the original bill will be produced in evidence to the court. Your petitioner, Wm. H. Gaines, also paid E. G. Malone for his improvements, a house upon the west side of Main or Valley street, where the St. Louis saloon now stands. Lawson Runyon, Mrs. Belding, and Mrs. Julian surrendered their claims without any suit. Abigal Sabin had other claims that she refused to sell or surrender. Your petitioners, always desiring to deal fairly with all men, offered to pay all of said occupants for their improvements, but they refused to sell to your petitioners or to surrender to them, and on the 5th day of January, 1852, your petitioners brought suits in ejectment against Richard Puckett, Harrison D. Flowers, Samuel and Oney Macklin, Abigal Sabin, Patrick Burke, and James Sumpter, and in 1853 and 1854 the further suits in ejectment
65 against Jacob Sweiptzer, Abraham Kempner, Edward Mills, and Jacob W. Parker; said suits included all the property on both sides of Valley street from the now Guinn house property to the Earl house property and a mill on the east side of Hot Springs creek, just south of the Malvern crossing. This property was at that early day all enclosed, occupied, and improved; it had upon it mills, dwelling-houses, stores, hotels, livery stables, blacksmith and wagon shops, and various other buildings. Your petitioners, being legally entitled to the possession of said property by virtue of said patent certificate, recovered judgment for possession of all of said property in the years 1856 and 1858. On the 3rd of March, 1856, the clerk of Hot Springs county issued writs of possession upon said judgments, and on the 6th day of March, 1856, the sheriff put your petitioner, Wm. H. Gaines, into the possession of the mill-house and other improvements and lands occupied by J. W. Parker, on and east of Hot Springs creek, a copy of which writ is hereto attached, marked "H," and prayed to be taken as part hereof, and just north of the now Malvern crossing, and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of a dwelling-

house and outhouses occupied by Richard Puckett, which house and grounds were where the Hot Springs hotel now stands, a
66 copy of which writ is hereto attached and marked "I" and prayed to be made a part hereof; and on the same day said sheriff put your petitioner in possession of all the houses, buildings, improvements, and inclosures occupied by Harrison D. Flowers, which property included what is now occupied by G. L. Wilson and Central house, a copy of which writ is hereto attached, marked "J," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into the possession of the dwelling-house and outhouses and inclosures occupied by Samuel and Oney Macklin, on the east side of Valley street, which property included the property now leased by Louis Bertsch and Wm. Staats, a copy of which writ is hereto attached, marked "K," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner into the possession of all the property occupied by Abigal Sabin's blacksmith shop and wood shop and other buildings, on the east side of Valley creek, which property included the property since leased to D. P. Beldin, J. W. Kimball, R. H. Colvin, and J. L. B. Caver by Wm. H. Gaines, and held and occupied by partee under said leases until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "L," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, in possession
67 of all the enclosures, storehouses, and dwellings occupied by Patrick Burke on both sides of Valley street, which property includes the property since leased to Bell and McCarthy, Herman Moscowitz, Philip A. Helfrick, J. W. Brantley, John Kubler, Green Payne, and H. C. Anderson by Wm. H. Gaines, and held and occupied by and under said lease until and including April 24th, 1876, a copy of which writ is hereto attached, marked Exhibit "M," and prayed to be taken as a part hereof; and on the same day said sheriff put your petitioner, Wm. H. Gaines, into possession of the inclosures, hotels, stores, and dwellings occupied by James Sumpter, on the west side of Valley street, which property includes the property leased to J. T. Chidester and Dr. O. A. Hobson and the open ground below Dr. O. A. Hobson's building and the ground occupied by Little and Jenkins on the west side of Valley street, and at the same time your petitioner had a judgment against said James Sumpter for one thousand dollars damages, and in consideration of your petitioner instructing the sheriff to return the execution satisfied the said Sumpter surrendered his lots and improvements he had possession of on the east side of Valley street to your petitioner and took a lease for the same, a copy of which writ is hereto attached, marked
68 "N." Said Chidester and Hobson held and occupied under said leases until and including April 24th, 1876, and on the — day of —— the sheriff of Hot Springs county put your petitioner, Wm. H. Gaines, into the possession of the lands, houses, and buildings occupied by Jacob Sweiptzer on the east side of Valley street, which property has since been leased by Fife and Houston and assigned to R. E. Allen and by Yonley & Bro., and was occupied on

said leases from the said — day of —— until ingdand includate 24th day of April, 1876, a copy of which writ is hereto thtache, marked "O," and prayed to be taken as a part hereof; so your petitioner- avers that on the — day of —— they not only had the legal but actual possession of the southwest quarter of the southwest quarter of said section thirty-three; that the same was fenced and improved at that date; that it had on it improvements worth the sum of five thousand dollars; that your petitioners kept possession and control of the same from that date until and including the 24th day of April, 1876; that they kept the improvements in repair, and in 1859 and 1860 caused to be built a theatre upon lands near Valley street just south of where the bridge now crosses the Hot Springs creek; also built other houses below the theatre, where the Cohn house now stands. Your petitioners aver that they have resided
69 on the premises claimed ever since 1852, a period of over twenty-five years. Your petitioners file herewith a map showing the improvements on the premises claimed in 1860, marked Exhibit "S." Your petitioners also aver that, being in the lawful, legal, and actual possession of said premises claimed in the year 1856, your petitioner, Wm. H. Gaines, on the 6th day of March, 1856, leased all the houses and outhouses, bath-houses, stables, gardens, lots, etc., to James Sumpter that had been occupied by James Sumpter before Wm. H. Gaines recovered the judgment and was put into possession by writ of possession heretofore referred to and compromise heretofore referred to, except one storehouse and two rooms then occupied by A. Kempner; said lands, houses, outhouses, and bath-house, stable, and garden are more particularly described in the lease, a copy of which is hereto attached, marked Exhibit "R," the original having been lost or mislaid, and which are also shown by map, showing old improvements, both of which are asked to be taken as a part hereof; and your petition-rs also, on the same day and year, rented one store-room and two rooms to A. Kempner, a copy of which lease is hereto attached, marked Exhibit "P," and prayed to be taken as a part hereof; said store and two rooms leased to Kempner occupied the ground now leased to J. T. Chi-
70 dester; and on the 8th day of December, 1857, your petitioners made the further lease of a part of the premises and improvements herein claimed to J. W. Parker, a copy of which lease is here*by* attached and prayed to be taken as a part hereof, marked Exhibit "Q," which lease included stables and buildings in the then forks of the road where the buildings commonly known as the Nichols, Vaughn, and Ducker building now stand; also a mill on the east side of the creek and north of the now Malvern crossing. All of said tenants occupied said premises under said lease until after the late civil war commenced, and said Sumpter renewed his lease until Hale was dispossessed by Gaines *et al.* Your petitioners aver that soon after J. W. Parker gave up possession of the premises between the then forks of the road they leased the same to John Sammons, who used a portion thereof for a blacksmith shop during the war, and it was reported to Maj. Gen'l Steele that John Sammons was in the habit of shoeing horses belonging to

guerillas, bushwhackers, &c., and a company of Federal soldiers were sent from Little Rock to Hot Springs to burn said shops and houses, and said shops and houses were burned in accordance with said instruction; and your petitioners are informed that afterwards various parties reported to Maj. Gen'l Steele, the Federal general commanding at Little Rock, that Mrs. Sumpter, the
71 widow of James Sumpter, was harboring, protecting, and feeding guerillas and bushwhackers in the houses that her husband, James Sumpter, had rented from your petitioner, Wm. H. Gaines, and Maj. Gen'l Steele sent another company from Little Rock to Hot Springs to burn said buildings, and said company did, in accordance with their orders, burn said buildings, together with the buildings that had been rented to A. Kempner, and which he had previously vacated; and they also burned at the same time the storehouse purchased of Malone. All of these buildings burned were the property of your petitioners. Your petitioners also aver that during the war the theatre building was destroyed and torn down by marauders.

Your petitione-s aver that during the late civil war there were very few persons that visited the springs for their health, and the buildings owned by your petitioners for the use and accommodation of visitors became old and dilapidated, and when the war closed your petitioners began to repair their buildings for the purpose of renting the same to the public, and in 1870, in order to accommodate the public and for the purpose of improving and making valuable their property that they had thus acquired, and that the Supreme Court of the United States had decided that they were
72 entitled to have possession of and which your petitioners honestly believed they were entitled to and would soon receive a patent for, they built, at an expense of twenty-four thousand dollars, the Hot Springs hotel, the first large, commodious, first-class hotel ever built in Hot Springs. They also built and purchased before the 24th day of April, 1876, several other buildings, used as offices, storehouses, restaurants, saloons, and dwelling-houses. Your petitioner- also refenced the premises herein claimed and cleared off a large portion of the ground claimed and put it into cultivation. Your petitioners also made large improvements to the houses in which they live. Your petitioners aver that the improvements that they have made independent of the improvements made by tenants of your petitioners, and which improvements made by tenants are by law also the improvements of your petitioners, as will be fully set forth hereinafter, cost at least the sum of sixty thousand dollars; and your petitioners show and aver that they have spent in defending the right conferred upon them to the premises claimed by the United States in issuing said patent certificate the sum of at least thirty thousand dollars in costs and lawyers' fees, and that they have paid about six
73 thousand dollars taxes to the State and county upon said premises; that your petitioners having purchased said premises from the United States Government, and honestly believing that they had a title to the same, and knowing that if said prem-

ises were sold for taxes their adversaries would buy it in and try to evict them upon such tax title, they always paid the taxes assessed against them on said premises promptly, and your petitioners aver that they had such confidence that they would get a patent to the whole of said quarter section of land, and had such a desire to have no cloud upon their title that they paid $416.00 taxes only — days before the Supreme Court of the United States declared that no one was entitled to a patent for said quarter section. Your petitioners aver that they have paid out for improvements, taxes, costs, lawyers' fees, and travelling expenses in attending court more than one hundred thousand dollars. Your petitioners have leased at various times a large portion of the property herein claim-, all which your petitioners herein set forth. Your petitioners aver that they
74 are the claimants and rightful occupants of said lands claimed; that they have caused all the improvements to be made that have been made thereon; that no one else have made any improvements thereon in their own right, but all buildings erected and improvements made by other parties than your petitioners upon said claim, other than those recovered in law by your petitioners, were made as the agents and tenants of your petitioners, under an express contract, and said buildings and improvements thus erected are now, in fact, in law, the buildings and improvements of your petitioners, and were the buildings and improvements of your petitioners on the 26th day of April, 1876, and were not the buildings of any one else, and all parties pretending to claim the same are estopped, both in law and equity, from setting up that they made the same in their own right, and are estopped, both in law and equity, from setting up that they occupied the respective premises claimed in any other manner than as agents and tenants of your petitioners; and your petitioners again aver that they are not only both the rightful claimants and rightful occupants, but that they are the only parties since 1852 that ever occupied the same in their own right; and they aver
75 that George Belding, Albert Belding, and Henry Belding having leased, assigned, transferred, and set over to your petitioners all their rights in and to said premises. Your petitioners again aver that they had, under a patent certificate from the United States, legally, peaceably, and uninterruptedly occupied said premises for more than twenty years previous to and including April 24th, 1876, and that they were the only parties that were upon the 24th day of April, 1876, occupying said premises in their own right. So your petitioners aver that, having once entered and paid the United States for the land claimed, which money the United States still retains, and having owned and made the first improvements on said premises, and having occupied in their own right and improved and caused to be improved in their own right said premises continuously and peaceably for more than twenty years previous to and including April 24th, 1876, and having paid taxes upon said lands for more than twenty years, and the Supreme Court of the United States having repeatedly decided that your petitioners were legally and rightfully entitled to the possession of

said lands and improvements, one of which decisions of the Supreme Court of the United States, declaring that your petitioners
76 are entitled to the premises in their possession and to the improvements made and caused to be made as against everybody except the United States, has been rendered since the decision of April 24th, 1876, and which decision the Supreme Court of the United States say is in harmony with the decision of April 24th, 1876, that they are by the laws of the land in equity and good conscience alone entitled to again purchase said premises from the United States. Wherefore they pray that the commissioners shall adjudge to them the right to purchase the said premises from the United States and for other proper relief.

WM. H. GAINES.
MARIA GAINES.

GENERAL LAND OFFICE, *November 25th*, 1851.

GENTLEMEN: The papers accompanying your letters of the 18th and 24th March last in reference to the claims of the Hot Springs, in Arkansas, having been submitted to the Secretary of the Interior for his action on the legal point in the case, to wit, the reservation of the land by Congress, they were returned to this office for its decision on the respective merits of the pre-emption claims, irrespective of this question.

77 On the 26th day of August last this office returned the papers with its decision adverse to the claims of the heirs of John Percifull and in favor of that of the heirs of Ludovicus Belding, it agreeing with you both as to the establishment of the facts of cultivation in 1829 and possession on May 29th, 1830, and regarding the objections of the receiver, founded upon the opinion that those acts were performed as the tenant of another as not affecting the validity of the claim. On the 14th ult. this office received the opinion and decision of the Secretary of the Interior, dated the 10th of that month, in which he sustains the existing validity of the act of the 20th April, 1832, it not having been repealed or affected by any subsequent law, and that therefore none of the claims preferred for this land are of any legality. On the said 14th ult. an application was made by the attorney of the heirs of Belding for permission to make an entry of said claim in order that they may be placed in a proper position for the assertion of their rights hereafter in the courts, stating that of course under the decision of the Secretary they should not ask for a patent.

This was refused by this office, and an appeal from that
78 action taken to the Secretary of the Interior, who on the 21st inst. addressed this office a letter, a copy of which is herewith enclosed. In accordance with the directions of the Secretary therein contained you are instructed to permit the "heirs of Ludovicus Belding" to make payment for the S. W. qr. sec. 33, T. 2 S., R. 19 W., as containing 160 acres, and, in addition to the ordinary entry thereof upon your books and the return to this office, you will note the fact of its interference with the New Madrid location of Langlois, of its embracing land directed to be reserved by act of 20th of

April, 1832, and that said entry is permitted under the Secretary's decision of the 21st November, 1851. Similar annotations will be made on the receiver's receipt and the register's certificate.

Respectfully, your obedient servant,

J. BUTTERFIELD,
Commissioner.

Register and receiver, Washington, Arkansas.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *November 21st*, 1851.

SIR: Upon consultation with the Attorney General, and after full consideration of the application of A. H. Lawrence, Esq., attorney for the heirs of Ludovicus Belding, one of the claimants to
79 the Hot Springs of Arkansas, on appeal from your decision of the 15th ultimo, against permitting said heirs to make entry under the acts of 29th May, 1830, and 14th July, 1832, I have concluded that it will be proper and in accordance with precedent to permit them to do so, and you will therefore instruct the register and receiver accordingly. Said entry will remain subject to the same power of revision and control by the General Land Office and this department as may be lawfully exercised over any ordinary entry. The Government will still hold the ultimate power of protecting its own rights, while the claimants will merely be placed in a position to contest the adverse claims of others to the same land.

I am, sir, respectfully your obedient servant,

ALEXANDER H. H. STUART, *Secretary.*

The Commissioner of the General Land Office.

No. 6545.

LAND OFFICE, WASHINGTON, ARKANSAS,
December 19th, 1851.

We, Maria Gaines, wife of William H. Gaines, late Maria Belding; Albert Belding, Henry Belding, and George Belding, heirs and legal representatives of Ludovicus Belding, deceased, of Hot Springs county, Arkansas, do hereby apply to purchase the southwest
80 quarter of section thirty-three (33), in township two (2) south, of range nineteen (19) west, as containing one hundred and sixty acres, for which we have agreed with the register, acting under instructions from the Commissioner of the General Land Office bearing date 25th November, 1851, to give at the rate of one dollar and twenty-five cents per acre.

A. BELDING.
MARIA GAINES.
HENRY BELDING.
GEORGE BELDING.

I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the tract above mentioned is sold

as containing one hundred and sixty acres, as mentioned above, and that the price agreed upon is one dollar and twenty-five cents per acre.

WM. H. ETTER, *Register.*

NOTE.—In accordance with instructions, I note the interference of this entry with the New Madrid location of Langlois, of it embracing land directed to be reserved by act of April 20th, 1832, and that the entry is permitted to be made under the decision of the Secretary of the Interior of November 21, 1851, transmitted to this office by Commissioner of General Land Office under date of 25th November, 1851.

W. H. ETTER, *Register.*

REGISTER'S OFFICE, WASHINGTON, ARKANSAS,
January 19th, 1852.

81 I, William H. Etter, register of the land office at Washington, Arkansas, do hereby certify that the foregoing pages contain a true copy of the letters received from the Commissioner of the General Land Office, the application filed, and the annotation on the tract book in this office made under said instructions.

WM. H. ETTER, *Register.*

No. 6545.

RECEIVER'S OFFICE AT WASHINGTON, ARKANSAS,
December 19th, 1851.

Received from Maria Gaines, wife of William H. Gaines, formerly Maria Belding; Albert Belding, Henry Belding, and George Belding, the heirs and legal representatives of Ludovicous Belding, deceased, of Hot Springs county, in the State of Arkansas, the sum of two hundred dollars in full for the southwest quarter of section thirty-three (33), in township two (2) south, of range nineteen west, containing one hundred and sixty acres (160), according to the return of the surveyor general, at $1.25 per acre. According to instructions I note that this entry interferes with the New Madrid location of Francis Langlois on the same lands, and also it embraces lands directed to be reserved by the act of Congress of the 20th April, 1832, and is only permitted to be made under the de-
82 cision of the Secretary of the Interior, under date of November 21st, 1851, and the instructions of the Commissioner of the General Land Office, under date of November 25th, 1851, in accordance with said decision.

$200. B. F. HEMPSTEAD, *Receiver.*

Receiver's Receipt, December 19th, 1851, *for* $200, *Entrance Money for Hot Springs Quarter Section* (*S. W.* — 33, *T.* 2 *S.*, *R.* 19 *W.*), "*G.*"

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 23rd*, 1873.

I, W. W. Curtis, acting Commissioner of the General Land Office

do hereby certify that the annexed copy of the tract book showing the Washington, Arkansas, cash entry No. 6545, of Maria Gaines *et al.*, is a true and literal exemplification from the records of this office showing that said entry has not been cancelled.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above mentioned.

W. W. CURTIS,
Acting Commissioner of General Land Office.

(Part of section), S. W. ¼; (section), 33; (township), 2 S.; (range), 19 W.; (acres), 160; (rate per acre, dollars, cents), $1.25; (purchase-money), $200.00; (name of purchasers), Maria Gaines, late Maria Belding; Albert Belding, Henry Belding, and George
83 Belding, heirs of L. Belding; (date of sale), 1851—December 19; (number of receipt and certificate of purchase), 6545.

Abstracts of Land Sold in the Land Office to —— from the — Day of —— to the — Day of the Same Month, Inclusive.

(When sold), 19th December, 1851; (number of receipt and certificate), 6545; (by whom purchased, name), A. Belding, Maria Gaines, H. Belding, and George Belding, Hot Springs, per act of 20th April, 1832; (tract purchased) (section *of* part of section), (S. W. quarter, whole of); (number of section), 33; (number of township), 2 S.; (number of range), 19 W.; (quantity acres), 160; (price per acre) (dollars, cents), $1.25; (purchase-money) (dollars), $200; (section 33), township 28, range 19 W.; reserved by the order of the President May 16th, 1839, for —— ——.

UNITED STATES LAND OFFICE,
CAMDEN, ARKANSAS.

I hereby certify that the above and foregoing is a true and full copy of the tract book in relation to section thirty-three, township two south, of range nineteen west, as the same remains in this office.

Given under my hand this second day of January, 1874; and I am unable to find in this office any instruction to this office from the Secretary of the Interior or from the Commissioner of
84 the General Land Office, at Washington, D. C., to cancel the above entry of Belding and Gaines; therefore said entry is not cancelled, upon the records in this office, the 13th day of January, 1874.

N. N. RAWLINGS, *Register.*

STATE OF ARKANSAS, } *To wit:*
County of Hot Springs, }

The State of Arkansas to the sheriff of Hot Springs county, Greeting:

Whereas on the second day of March, A. D. one thousand eight hundred and fifty-four, at our circuit court of Hot Springs county, by the consideration and judgment of said court, Wm. H. Gaines

and Maria Gaines, his wife; Albert Belding, Henry Belding, and George Belding recovered against Patrick Burke the sum of one hundred dollars, as well as the possession of certain lands and tenements situated in said county, namely, all that part of a certain tract or parcel of land known and described on the plat of the public survey as the southwest quarter of section thirty-three, in township two south of range ninetween west, described as follows, to wit: All that portion of said quarter section enclosed by the fence or enclosure now surrounding on three sides a certain tenement known as Burk's storehouse, including the land on which said storehouse is situated, the said store-
85 house being — what is known as Hot Springs valley, fronting on the west side of the stage road leading from the Hot Springs to Little Rock, and also a certain tenement now occupied by one Jacob W. Parker, including all the land enclosed by the fence now surrounding the same, and all the enclosures adjoining and connected with the same, the said last-mentioned tenement and enclosures being below and south of the point where the stage road crosses the Hot Springs creek west of said stage road and between that road and the road leading south from Hot Springs to the Washita, which was adjudged to them for their damages sustained in that behalf expended, and which costs are taxed and amount to the sum of twenty-two dollars and eighteen cents: You are therefore commanded that you forthwith deliver to the said Wm. H. Gaines and Maria Gaines, Albert Belding, Henry Belding, and George Belding possession of the premises above described; and you are further commanded that of the goods and chattels, lands and tenements, of the said Patrick Burke you cause to be made and levied the damages, together with costs aforesaid, and that you have the said damages and costs before our said circuit court, at the next February term thereof, on the second day of said term, and
86 you then and there certify how you have executed this writ.

In testimony whereof I, R. Striblong, clerk of the said court, have hereunto set my hand and (L. S.) affixed the seal of the said court this 23rd day of November, 1857.

R. STRIBLONG, *Clerk.*

I do certify that I have executed the within by putting the within-named Wm. H. Gaines in possession of the within-described property on the 26th day of November, 1857, as I am within commanded and the within named; and I further certify as to within-named damages of one hundred dollars, &c., I did not levy the same of the goods and chattels, lands and tenements, of said defendant Burk as I am within commanded because as to said damages I was enjoined and restrained by writ of injunction issued in that behalf by the clerk of Hot Springs county upon a bill filed by said Burk and others for that purpose this Feb'y 15th, 1858.

JOSEPH JESTER, *Sheriff.*

In the Matter of the Claim of Wm. H. Gaines and Maria Gaines, No. 784, Consolidated with Sundry Other Cases.

Monday, *February 11th*, 1878.

Forenoon Session.

87 Come now the claimants, William H. Gaines and Maria Gaines, by their attorney, Hamilton Benjamin, and offer in evidence in support of their claim the following, to wit:

1. Certified copy of a transfer by Nancy Moore on the 3rd day of March, 1829, to Alexander L. Rogers, and assigned by said Rogers on the 5th day of December, 1829, to Wm. H. Moore, and on the 4th day of March, 1830, assigned by said Moore to L. Belding.

2. Certified copy from the records of the General Land Office of an application to the Secretary of the Interior by the attorney of the Belding heirs to purchase a certain quarter section of land in the Hot Springs Mountain reservation, together with the endorsement of the Attorney General in favor of the right of said Belding heirs to enter said land.

3. Instruction of the Secretary of the Interior, dated November 21, 1851, to the Commissioner of the General Land Office in regard to allowing said Belding heirs to enter said land.

4. The instruction of the commissioner of public lands, under date of August 20, 185–, in the form of a letter.

5. Copy certified by the register of the land office of the instructions issued by the Commissioner of the Land Office.

6. The application of the heirs of Ludovicus Belding to purchase and enter the southwest quarter of section 33, township 2 south, 19 west.

88 7. Receipt of the receiver of the land office, B. F. Hempstead, No. 6545, dated December 19th, 1851, for $200, for patent certificate for the southwest quarter of said section 33, township 2 south, 19 west.

8. Bill of sale of improvements of Abigail Dupas, late Abigail Sabin, dated March 25, 1852, to William H. Gaines.

9. Certified transcript of a judgment rendered in the Hot Springs circuit court at the February term, 1858, in favor of William H. Gaines *et al.* and against Jacob Sweiptzer.

10. Certified transcript of a judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of William H. Gaines and others and against Jacob Sweiptzer.

11. Certified transcript of a judgment of dismissal of appeal in the supreme court of Arkansas, dated February 18th, 1860, in case Wm. H. Gaines *et al. vs.* Jacob Sweiptzer, said judgment being the same rendered in the circuit court of Hot Springs county at February term of 1858.

12. Certified transcript of the record entry of the supreme court of Arkansas on appeal in said cause, dated July 6th, 1857, being in the case wherein judgment was rendered on the 25th day of February, 1856, in the Hot Springs circuit court.

89 13. Certified transcript of record entry in the Supreme Court of the United States in same case, December term, 1859.

14. Certified transcript of record in the supreme court of Arkansas in same case, dated in 1860.

15. Certified copy of record entry of the supreme court of Arkansas made on the 18th day of February, 1860, in the cause wherein judgment was rendered on the 25th day of February, 1856.

16. Certified copy of a judgment rendered on the 15th day of February, 1858, in the Hot Springs circuit court, in favor of Wm. H. Gaines *et al.* against Abraham Kempner, being the same incorporated with the petition of William H. and Maria Gaines, No. 784.

17. Certified transcript of the record entry of the supreme court in same case, appealed, made on the 18th day of February, 1860.

18. Certified transcript of record entry in suit in ejectment of William H. Gaines *vs.* Edmund Mills and Roxana Butler in Hot Springs circuit court, made February 25th, 1856.

19. Certified transcript of record entry of the supreme court of Arkansas in the case of Edmund Mills *et al. vs.* William P. Gaines, dated July 6th, 1857.

20. Certified transcript of record entry of the Supreme Court of the United States, on appeal of same case to that court, made
90 on the 9th day of January, 1860.

21. Certified transcript of record entry in the supreme court of Arkansas in same case, dated February 18th, 1860.

22. Certified transcript of record entry of the Hot Springs circuit court, in 1856, showing judgment against John C. Hale in favor of William H. Gaines and others, together with certified transcript of three record entries in same cause in the supreme court of Arkansas; also certified transcript of record entry in same case in the Supreme Court of the United States. (Messrs. John M. Harrell and W. P. Walsh enter their several objections to the admission of the foregoing transcripts in behalf of sundry claimants represented by them.)

23. Certified transcript of record entries in the supreme court of Arkansas in the case of Henry M. Rector *et al. vs.* Wm. H. Gaines *et al.*, together with a certified transcript of record entries made in the Supreme Court of the United States in the same cause.

24. Certified copy of record entry in the Supreme Court of the United States, December 2nd, 1859, in the case of William H. Gaines *et al. vs.* Loretta T. Hunter.

25. Certified transcript of judgment rendered in the Hot Springs circuit court on the 25th day of February, 1856, in favor of
91 William H. Gaines *et al. vs.* James Sumpter.

26. Writ of possession in case of Patrick Burke *vs.* Wm. H. Gaines *et al.* in the supreme court of Arkansas.

27. Certified transcript of record entries in the supreme court of Arkansas in the case of Loretta T. Hunter *vs.* Wm. H. Gaines *et al.*, July term, 1855.

28. Writs of possession, with the sheriff's return thereon endorsed, in case of Wm. H. Gaines *et al. vs.* J. W. Parker, Hot Springs circuit court, March 3rd, 1856, returned same day.

29. Writs of possession and sheriff's return thereon in case of Wm. H. Gaines *et al. vs.* J. W. Parker, in the Hot Springs circuit court, issued March 3rd, 1856, and returned March 11th, 1856; also writ of possession and sheriff's return thereon in the following cases, in all whereof Wm. H. Gaines *et al.* were plaintiffs, to wit: Richard Puckett, issued March 3rd, 1856, returned March 10th, 1856; Harrison D. Flowers, issued March 3rd, 1856, and returned June 16th, 1856; Samuel Macklin *et al.*, issued March 3rd, 1856, returned March 10th, 1856; Abigail Sabin, issued March 3rd, 1856, returned May 1st, 1856; Patrick Burke, issued November 23rd, 1857, returned Feb'y 15th, 1858; James Sumpter, issued March 3rd, 1856, returnable March 10th, 1856; all of which are certified by the clerk of Hot Springs county in 1858. (John M. Harrell and W. P. Walsh severally in behalf of sundry parties represented by them object to the admission of the above-described writs.)

92 WILLIAM H. GAINES, being first duly sworn, testified as follows:

Questions by his attorney, H. BENJAMIN:

1st Q. State your name, age, and residence.

A. Wm. H. Gaines; age, 80; residence, Hot Springs.

2nd Q. State to the commission in your own way the general history of this case.

—. My name is Wm. H. Gaines, 80 years of age, and have kept house here for the last 25 years. I am one of the claimants in claim No. 784. I married one of the heirs of Ludovicus Belding in the year 1849. I do not recollect what year it was, but think it was about the year 1851, I went to Washington to investigate all the claims on the Hot Springs property. I found Mrs. Belding had proved up a pre-emption in the year 1839, and came to the conclusion that she had the best title of the three claims I found in the Land Office. I employed A. H. Lawrence to investigate those claims, and came to the conclusion to prosecute the claim of the Belding heirs, and made application to the Secretary of the Interior to have that claim referred back to the district land office to be reproved up, clothing the other claimants with authority to examine, disprove, or invalidate the testimony if they saw fit. I do not recollect exactly what time we were in Washington, but think it was in the summer or fall of 1850. It was referred back to the district land officers to be reproved and investigated, and on the 22nd of January, 1851, Lydia Belding, widow of Ludovicus Belding, relinquished her right in favor of her children, the heirs of Ludovicus
93 Belding. The proof was taken up and well cross-examined by Rector and Hale. When the proof went to Washington her attorney made application to enter the land, which the Commissioner of the Land Office refused, and he appealed to the Secretary of the Interior. The Secretary of the Interior first decided against the entry, and we appealed to the Attorney General. The Secretary of the Interior in his letter to the Commissioner, after a full consideration and consultation with the Attorney General, came

to the conclusion that it was right and proper to admit the entry of the Belding heirs, and directed him to so instruct the district land officers in Arkansas. He did so instruct them, and the entry was made in the name of the four heirs, and I advanced the purchase-money, the sum of two hundred dollars, which was paid to the Government and which the Government still holds. It has never been repaid to the heirs. When I entered this I received a patent certificate in the name of the heirs for the southwest quarter of section 33, township 2 south, range 19 west, in the State of Arkansas. After getting the certificate of entry I came directly to the Hot Springs and purchased of Abigail Sabin all her improvements east of Hot Springs creek, which included all the improvements east of said creek except a small house occupied by Richard Puckette, where the Hot Springs house now stands, and a small cabin above the Puckette house and a cabin and mill near the now Malvern
94 crossing and an enclosure below the Malvern crossing and between the Malvern road and Hot Springs creek of Patrick Burke. Said Abigail Sabin's improvements consisted of a lot of cabins, cribs, stables, gardens, and lots where and near where I have since resided at the springs, and also included two springs on the mountain and a large field east of the New Malvern road and south of the now Gaines avenue, making in all 20 acres, more or less. These improvements purchased, with the exceptions named, were all the improvements that were on the south half of the southwest quarter of section 33, township 2 south, range 19 west, east of the Hot Springs creek. These fields were all enclosed with fences when I bought them, and had been in cultivation apparently for several years, and have been occupied by me and kept fenced ever since—from the time of said purchase up to and including the 24th of April, 1876—and a large portion of the time I have had them in cultivation. At that time there was no one living on this quarter section, east of the improvements I bought of Mrs. Sabin, and continued to be none until after the close of the war. I took charge of the land and prevented people from cutting timber as long as I could keep them off, and paid taxes on it from the time it was entered to the date of the decree. The improvements that were excepted were right along on the creek bank. The west side of
95 Hot Springs creek, at the time of making this entry, was in the possession of Lawson Runyon, Abraham Kempner, Mrs. Belding, Mrs. Julian, Patrick Burke, James Sumpter, E. G. Malone, Edmund Mills, Harrison D. Flowers, Abigail Sabin, Sam. and Oney Macklin, and Jacob Switzer, and on the 5th of January, 1852, in the name of myself and Belding heirs I commenced suits of ejectment in the Hot Springs circuit court against Richard Puckette, Harrison D. Flowers, Patrick Burke, Abigail Sabin, James Sumpter, and soon thereafter I commenced suits against Jacob W. Parker, who was in possession of the mill and cabin, and Edmund Mills, James Switzer, and Abraham Kempner. I recovered judgment in the first lot of cases commenced in 1856, and writs of possession were issued on said judgments and I was put in possession of the property. I afterwards recovered judgment in the other cases and was put in posses-

sion of the property, most of it on the 6th of March, 1856. I continued in possession of said property until dispossessed by the decision of the Supreme Court of the United States, April 24th, 1876. During that time several parties tried to jump my possessions, but I have always applied to the court and dispossessed them. The improvements claimed by E. G. Malone I purchased soon after I bought out Abigail Sabin. I repaired the cabins, lived
96 in them three or four years, and then built my dwelling-house that my family has resided in and occupied up to last December. Soon after I purchased of Abigail Sabin I enlarged my fields and repaired and built new fences and took in ten or twelve acres more of ground on what is now the north side of Gaines avenue. Soon after I was put in possession by the writs above named I commenced building new hewed-log cabins. I built three double log cabins and afterwards built one more log cabin joining the property that had been occupied by Mrs. Julian. On the west side I enclosed it all with a good fence, on the east side of what is now Valley street, commencing near the bridge that crosses the creek south of the Hot Springs hotel and extending down to about two feet into the now Cohn building. Mr. Turnbull put up a theatre one hundred feet long, forty feet wide, and seventeen feet high. George Belding and I purchased this theatre of Turnbull in 1859, and George Belding afterwards sold his part of the house to me, and below the theatre, the same fall, I built a large room for a dining-room, and put up two good size log rooms in front of the dining-room with a hall between them, about six feet south of the south end of the theatre, and cut the theatre up into, I
97 think, thirty-two bed-rooms, afterwards making a two-story house for the purpose of boarding-house or hotel. About this time I enclosed all below the property that had formerly been occupied by Switzer between the street and the creek, west of the creek, down to the section line, and made a kiln of brick there. I made no other improvements of importance until after the close of the war. At the beginning of the war, including the houses that I purchased and recovered by suits of ejectment and built myself, I had twenty houses, one mill, one house used for a hotel, and one of the twenty houses was a row of houses of ten or eleven rooms that I *I* recovered from Sumpter. During the war the hotel house, formerly the theatre, was destroyed by marauders and trespassers, so that I had to tear down the remnants to save what lumber there was. During the war the improvements that I had recovered of Burke that were on the east side of the road where the Nichols, Vaughn, and Ducker buildings now stand were destroyed by fire; they were burned by Federal troops. These troops also burned the row of houses recovered from Sumpter, and also the house that I purchased of Malone. In the spring of 1865 Mrs. Gaines fenced in nearly all the ground recovered from James Sumpter east of the
98 now Sumpter house. The houses formerly upon this ground were burned during the war. I had a number of the old houses that were left standing repaired so as to make them tenantable. Soon after repairing the old houses I caused to be fenced up

all the property between the Malvern road and Hot Springs creek down to the line to be used for a brick yark, and had the fences repaired for the fields that I had before the war, and cultivated and occupied the same until after the decision of April 24th, 1876. In 1870 Mrs. Gaines, one of the petitioners, built the Hot Springs hotel, which was the first fine hotel ever erected in Hot Springs. It cost about twenty-four thousand dollars and was the principal and leading hotel until the Arlington was built. The same year I built the house now held, under a lease from the receiver, by William Staats and also claimed by him before this commission, the said house being situated the second house below the Malvern crossing, on the east side of Valley street. This house cost five hundred dollars. In 1871 I built the barber shop north of the Hot Springs hotel, which cost about one hundred and fifty dollars. I also built the office south of the Hot Springs hotel now occupied by
99 Dr. Taylor, which cost about four hundred dollars. I also, the same year, built the bakery, the first building south of Dr. Taylor's office, which cost about four hundred dollars. Soon after this year I built the house south of the now Malvern crossing, which is now held under a lease from the receiver and claimed by Rachael Bertsch. I next built the house and stables south of the now Cohn house, and which are now held, under a lease from the receiver, by Thall and others. These buildings cost about six hundred dollars. The next building south of the stable I bought from Cloves. This building is now held by Julius Breytie under a lease from the receiver, and is also claimed by Breytie before this commission. I soon after bought of Leeson the house on the west side of the street just south of the house of Sutton, the cost of which is estimated at a thousand dollars. I also built three cottages north of the cemetery, which cost six hundred dollars apiece. I also built two storehouses south of the Garland house, which cost about nine hundred dollars. I also built two cottages on the Malvern road nearly west of the cemetery, one costing six hundred dollars, the other three hundred. I also bought a house of N. H. Cloves south of these two cottages on the Malvern road for three hundred dollars. I also bought a blacksmith shop on the Malvern road. I also bought a stable of Mr. Bell on the
100 Benton road. In the year 1874 I fenced all north of the Benton road to near the east line and to what I supposed to be the east line and north on the east line away up into the mountain and thence west to include the hot springs obtained from Abigail Sabin. This fence made a complete enclosure of all the ground now claimed by me north of the Benton road. This was a good, substantial fence, except some portion of the mountain, where it was impossible to make a first-class fence. In addition to buildings put up by the petitioners in person I made fifty or sixty leases or contracts to various persons to put up buildings on the ground claimed and occupied by me. In a large portion of these cases my old buildings had to be torn away to make room for better buildings. I enlarged my residence by building eight rooms, which cost me about sixteen hundred dollars. I have resided continuously

upon the property claimed in the petition ever since the year 1852 until December last, a period of about twenty-six years, and during all that time the petitioners are the only ones that have occupied this ground as their own except a few negroes in the southeast corner of the quarter section, who have been holding adversely to your petitioners. With this exception there has been no one since I recovered these lands, in the year 1856, who has lived upon any portion of it and claimed or occupied the same as their own.

101 Your petitioners are and have been all this time the sole occupants in their own right. All other parties, with the exception of the negroes referred to above, that have lived upon the same have done so under contracts with your petitioners, recognizing and treating them as landlords. During all this time I believed that I had the title to said lands and have paid taxes upon said lands ever since I entered and paid for the same at the United States land office. I know of no one else that has paid any taxes upon said lands or ever pretended to give them for assessment. I so strongly believed that this property was mine and that I would get a title to it that I paid the taxes for the year 1875 only a few days before the decree of April 24th, 1876. I have been a *bona fide* occupant of these lands for more than a quarter of a century, and during that time I have exercised and had the same control over the lands claimed that any person could or would exercise over lands that they held a patent for from the United States. When A. O. Morgan, the United States receiver, took possession I was the first man on the reservation to turn over my property to him. I turned over all property held by myself, both that held in person and that held by my tenants.

102 Cross-examined by JOHN M. HARRELL, representing No. 1, claim of Algernon S. Garnett, M. J. Towle and wife, James O. Ducker, Rachel Burch, and sundry other conflicting claims:

3rd Q. You say your fence north of the Benton road fell short of the section line?

A. Yes.

4th Q. How far?

A. I cannot say exactly.

5th Q. Did it go beyond the ground of James O. Ducker?

A. Yes; it enclosed that ground.

6th Q. You use the word "enclosed," understanding what it means, and deliberately, do you?

A. Yes; I had it all under fence.

7th Q. Did you not merely build a line of fence between him and the road and stop there?

A. I enclosed every inch of that ground.

8th Q. You had Mr. Ducker under arrest for trespass about 10 days, had you not?

A. Yes; I had some trouble with him. He broke my fence down.

9th Q. Did you take the lumber that he had on that ground and appropriate it to your own use or cause it to be appropriated?

A. No, sir.

10th Q. What did you do with the posts he put there?

A. I never had anything to do with them. I do not know who removed them. I think I stopped him by injunction.

103 11th Q. How many buildings do you say you had possession of just before the war?

A. About 20.

12th Q. Where did they stand?

A. The theatre building stood south of the Hot Springs hotel, for one. I have mentioned all these places already in my testimony.

13th Q. They were destroyed during the war by fire?

A. Yes, sir; the theatre was getting destroyed by their tearing doors down, and so on, and there was a great deal of good lumber in it, and I tore it down to save it from being destroyed.

14th Q. Which of the buildings were not destroyed?

A. My dwelling-house was not. The church was not destroyed. Above there there were some few cabins along where the Citizen's stable is, from there down to the St. Louis saloon, that were destroyed. The buildings that I put up previous to the war, along down the lower end of the valley, were not destroyed. On the west side of Valley street there were 8 log cabins that I built that were not destroyed. There were three double ones and one with two rooms in it, making eight rooms in all. They commenced down about where Smith's mattress-house is and ran up north. They were about 20 feet apart.

Q. Are those buildings there yet?

104 A. No, sir; they were torn down in order to lease the ground. Some of them fell down, and I may have hauled them off or given them away. They ran up to the new Malvern crossing, and the north one a little higher, maybe.

Q. When did you fence in from the Malvern crossing down to the section line?

A. In 1858, after I built the log cabins. I fenced along in front of them, leaving a space between the fence and the cabins of 8 or 10 feet. It was plank fence; it was burnt up and torn away during the war.

Q. Did that fence form an enclosure?

A. Yes.

Q. Was there another fence in the rear of the house?

A. Yes; there was a rail fence between the Sumpter ground and the Burke ground.

Q. Whose property did you claim that to be in 1858—those cabins and that fence?

A. I was acting as agent for the Belding heirs, but I claimed the house that I put up as my own. They were put up and purchased with my own money.

Q. Those 20 houses that were standing there just before the war you claimed as the property of the Belding heirs, did you?

A. No, sir.

Q. Which of them did you claim as your individual property?

105 A. My residence and those log houses that I built.

Q. Did you claim the old theatre?

A. Yes; and the log houses south of the theatre. I built them—that is, on the east side of Valley street.

Q. State what you think those houses and all the property claimed by you was worth at that time.

A. The theatre cost me $1,700; the log houses south of it—I worked on them with my own hands—they are, all together, worth about $500, on the theatre side of the street.

Q. What were those buildings that were on the other side of the street worth, from the mattress-maker's up?

A. Labor was cheap when I built them; they were simple log cabins, one room, 16 or 17 feet square.

Q. Which was the most valuable improvement you owned at that time?

A. The dwelling-house.

Q. Which next?

A. The theatre.

Q. Did you own any other valuable improvement at that time besides the log houses, the theatre, and the dwelling-house?

A. Yes; the field that I bought of Mrs. Sabin. It is south of Gaines avenue—the biggest field. The north line of the fence

106 ran in Gaines avenue; on the west it ran out to the Malvern road; on the south to the line of the southwest quarter of section 33. The east line of the field was out somewhere beyond, where a colored man named Thal lived at that time. It was much bigger than it is now, because part of it ran down into section No. 4. I think more than half of it was in section four. It included where that house was and several other lots up there. My purchase included lots around my present dwelling-house and a little field, in woods, where the cemetery is. I fenced in 10 or 12 acres north there and drew the fence in so as to turn over to Mrs. Sabin what was outside of what I entered. I drew the line in on the east to make it more square. I fenced in what lies north or Gaines avenue a year or two after I bought it, as soon as I knew where the lines were.

Q. Was it enclosed when you bought it?

A. It was.

Q. What did you consider it worth?

A. I paid $700 for it. I consider it worth all of that.

Q. What other valuable property did you own at that time?

A. I have stated all about that. I had a kiln of brick made on the east side of Valley street, between that and the creek.

107 That was the first brick-kiln I had made; that was made before the war. After the war I contracted with Cloves to make brick for me and gave him a percentage of what brick he made. On that thin strip of ground, where the Cincinnati house burned down and where the Surprise house stands, was made two kilns of brick, and that was done since the war.

Q. Which was the property of the Belding heirs?

A. I have a transfer from them; it is all mine.

Q. Were those transfers made prior to your petition in bankruptcy?

A. Very recently; since they have been hunted up to give me trouble.

Q. Did you put in any of this property in your petition in bankruptcy?

A. I did not. I consulted my lawyer, Judge Watkins, who knew all about it, and he said it should not go in. I went through bankruptcy and was honorably discharged seven or eight years ago.

Q. When did you file your petition in bankruptcy?

A. I cannot recollect the date.

Q. Did you transfer it then to the Belding heirs?

A. No, sir.

Q. You did not see proper to claim it when you went into bankruptcy?

A. I did not.

Q. You bought certain improvements that were erected?

A. Yes.

108 Q. Were they within these enclosures that you speak of?

A. Yes; all except the part of Mrs. Sabin's field, which I gave back to her.

Q. In whose right do you make your claim now to this property?

A. In the right of Maria Gaines and myself.

Q. Did the Belding heirs file any petition?

A. No, sir; I am controlling it all myself.

Q. Where was this Cloyes house that you bought?

A. Part of the brick yard there.

Q. Where was the blacksmith shop?

A. It is there now. I bought it from Cloyes. It was considered in the $300. There were some improvements that he had put on it that I bought of him. It was considered in the $300.

Q. You say that since you recovered these lands, in 1856, no one has resided on them except yourself or owned them?

A. I do not think that anybody has ever claimed them in their own right as we have.

Q. What lands are referred to in your petition?

A. The southwest quarter of section 33, township 2 south, — 19 west.

Q. How do these people happen to be there unless they have resided on it?

A. They were not there in their own right.

Q. Some of them have built improvements upon it, have they not?

109 A. Yes.

Q. And without your assistance?

A. They generally leased the ground from me.

Q. Did M. W. Towle lease any from you?

A. He made a bargain with my agent to lease it. I have no written lease.

Q. Did you contribute any money to the building of the improvements erected on that ground by Mr. Towle or give him any assistance of any kind?

A. No, sir.

Q. Who built the Salmons house, near the Methodist church, that Mrs. Burch lives in?

A. Allen Salmons.

Q. Did you agree with him to let him have that 20-feet alleyway leading down from his house?

A. No, sir; I might have agreed to let him use it. He agreed that he would keep off of the quarter section, and I believe he did. I do not think it is on that quarter section at all.

Q. The new Valley house, now used as the court-house, did you contribute any money or any assistance to the erection of that building?

A. Yes, sir; I loaned the old man fifty dollars, and he said he wanted to put it in that building.

Q. Did you know him very well?

110 A. He had been a very good tenant and paid punctually and he leased the ground. I have his note for $50 for the money I lent him. He wanted to keep it, and I told him to keep it awhile.

Q. His note is out of date, is it not?

A. I do not think it is.

Q. That is all you had to do with erecting that house?

A. Yes.

Q. The house of Mr. Ducker, the three-story house on the corner of Malvern crossing, did you contribute money or assistance to the erection of that house?

A. No, sir.

Q. The stable that Gillis had and sold there, did you contribute any money to build that or any means of any kind?

A. Yes; I furnished all the lumber.

Q. You have stated all the buildings you have erected since the war, have you?

A. Yes; I aimed to name every one that I erected. I show vouchers for the building and leasing my house to Burch, and so on. Then it was turned over to the receiver. He has held possession. Those are the houses I built myself. The Gillis property was built by me under written contract.

Q. Did you make any distinction in your testimony between the buildings you erected and those built by old tenants?

111 A. I have not said a word about my tenants' building; only that I had 50 or 60 tenants who leased. I described my own buildings.

Q. You said in your testimony that you were the first man that turned over that property to the receiver. How did you turn it over?

A. I had an interview with Mr. Morgan, in which he told me that he would live up to the instructions of Judge Gray, and that my tenants should have the preference in the right to lease. I thought

maybe I could get a chance to lease my houses. I tried him the second time, and he was very positive that my tenants should have the preference. I told him I would throw no obstacle in his way, and that if he would send his clerk around with me we would go around, and I would show him every house I owned and tell him who lived in it and turn them over to him, which was done. Captain Peck went around with my son, who was attending to the collection of the rents for me, and he turned the houses over to him. My tenants then leased from the receiver. The houses were not turned over to the tenants.

Q. The receiver preferred to lease the ground to the occupants?

A. Those were his instructions.

Q. What did you lease from the receiver?

A. I first leased my dwelling-house—my wife did.

112 Q. How much property did you lease in connection with your dwelling-house?

A. There was a little difference between Mr. Morgan and me. I got him to make out the application himself in his own handwriting. I meant it to include all my lots, but he never would give me the lease. I paid the monthly rent that he put on my dwelling-house—all that was under fence. I told him I wanted to take a lease for the whole of it, but he did not want to give it to me, but he never leased it to anybody else. People came to me to lease from me, but I never had any transaction since, except to sell Mr. Wilson a stable. I do not know whether it was a few days before the decision of the Supreme Court or a few days afterwards. I disclaimed owing anything till the act of Congress was passed giving me a show for my possessions there.

Q. You leased your residence at first?

A. I rented it. Afterwards, as the tenants went away, some cottages that I had I offered to Mrs. S. H. Stitt and let her lease them. At the north end of the cemetery there were three cottages and 2 store-rooms, and it may have included this Surprise house. I am not sure but there were six in all. They were on the east side of the creek. I leased those; then I leased three houses to

113 Albert Gaines, Dr. Taylor's office, and the Smith house, on the west side of Valley street, the two cottages and the Cloyes house to Mrs. Williamson.

Q. What two cottages were those?

A. They were the two lying between the Malvern road and Hot Springs creek, opposite the cemetery. Those cottages Mrs. Williamson, my daughter, leased, at my request, from the receiver. They were given to her. I bought a little shanty that was back of the Burch house; that was his own transaction. I think he leased that from the receiver.

Q. You say you have filed in this case the transfer from the Belding heirs to yourself?

A. I will do it. I have the conveyance of recent date. One was signed in Texas and the other here. Albert Belding signed his, George signed his, and Henry signed his. It has been within the last three months.

Q. Your plat shows how far your line runs, does it?
A. Yes; it includes Wilson's stable, the Hot Springs hotel, and the barber shop this side.
Q. Did you pay any taxes on this property in your own name?
A. No, sir; in the name of the Belding heirs.

Questions by Mr. CURL, representing Sumpter, Kemper, and other claimants:

Q. State if you acquired any possession west of Hot Springs creek originally by virtue of purchase, or was it all by virtue
114 of the Beldin heirs' certificate of entry.
A. I bought the Malone house, that covered the ground where the St. Louis saloon now stands, in 1852, soon after I bought Mrs. Sabin's ground.
Q. Any others?
A. No, sir; not on that side.
Q. Then the balance of your possessions on that side were acquired by virtue of the certificate of entry of the Belding heirs?
A. No, sir. I took possession of the vacant ground and built those log cabins.
Q. My question is if the balance of the possessions you acquired on the west side of the creek were acquired by virtue of the entry of the Belding heirs.
A. Yes; except that there was a good deal of vacant ground that I took possession of there.

Re-examined by Mr. BENJAMIN:

Q. State whether some of the ground occupied by Mr. Runyon and Mrs. Beldin was not turned over to you by agreement without suit.
A. Yes; that was vacant ground. Mrs. Beldin had a house this side of the well and Runyon had a cabin south of the Kempner property there.

And further saith not.

FEBRUARY 11TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

ROBERT B. RUNYON sworn and examined.

115 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Robert B. Runyon; age, 26, and reside at Hot Springs.
Q. How long have you resided at Hot Springs?
A. I was raised here.
Q. Are you acquainted with Wm. H. Gaines and wife?
A. Yes, sir.
Q. State whether you know anything about the possession that Lawson Runyon had upon this quarter section, where it was, and who he was.

A. He was my father; he did have possession several years ago.
Q. Where was it?
A. It was in the lower end of the valley, at the foot of what is called Gwinn hill. There is a house on that particular spot now, and, as well as I can recollect, it is fenced up.
Q. North or south of the church?
A. North of the church.
Q. Who did he turn that possession over to?
A. Mr. Gaines.
Q. Who has had possession and control of it since that time?
A. Mr. Gaines, I think—Wm. H. Gaines.
Q. You have known it all the time?
A. Yes, sir; have never known any one else owning or control-ing it.

Q. State what street it comes up to.
116 A. It comes up to the main street, Valley street, and runs up on the hill to the section line.
Q. About how many feet upon the street was it?
A. I suppose it is 60 or 75 ft.
Q. State whether Mrs. Beldin had a claim.
A. She had a claim this side of that.
Q. State whether you know of Abraham Kempner ever having any claim.
A. Yes, sir; I know of his claim there; it is adjoining that same lot and fronted on Valley street.
Q. Any house upon it?
A. Yes, sir.
Q. How far up did it run?
A. Some 100 ft., I guess.
Q. State whether you know to whom Kempner turned it over.
A. I think Mr. Gaines has had possession of it. A. I don't recollect; it was a good many years ago.
Q. And since that time he has had continuous possession?
A. Yes, sir.
Q. Do you know anything about the claim of Mrs. Beldin?
A. Yes; she had a claim right this side, commencing at the well; it fronted on the Valley street and ran back to the section line.

117 Q. How many feet in front?
A. Probably 125 ft.
Q. Who has been in possession of that claim for the last ten years?
A. William H. Gaines.

By Com. COBURN:

Q. What improvements are on it?
A. When Mrs. Belding owned it there was a frame house on it of some four rooms; the front of it was weatherboarded; there was a well between that and Kempner.
Q. Do you know anything about Mrs. Julian having any possessions on that street?

A. I recollect about the house very well; it is somewhere just below what is known as the Valley house, where Capt. Toale's office is now; was a small log cabin on it 16 by 18 ft. square. Some time afterwards Mrs. Gaines built an addition to it—another room. This was after Mr. Gaines got possession of it. He made a double log cabin of it.

Q. State whether you knew anything about Patrick Burke having any possession.

A. That is before I recollect. I know where they were.

Q. State who has been in possession, as near as you can recollect, of the ground.

A. Mr. Gaines.

Q. Any house on it?

A. Yes, sir; a great many houses on it now.

118 Q. Any there before the war?

A. Yes, sir.

Q. Who had control of those houses?

A. Major Gaines. No one else set up any ownership to them, to my knowledge.

Q. State whether you know anything about the possession of James Sumpter at one time; and, if so, where it was.

A. It was situated about opposite the lower corner of the Hot Springs hotel; on the opposite side of the street—the houses.

Q. That extended up how far?

A. As far as Dr. Hobson's office; somewhere near there.

Q. Who was above it?

A. Mr. Kempner had a store above it, and also Mr. Beldin above there.

Q. What became of the improvements on it?

A. They were burned down during the war, and have never been rebuilt since. Some few houses have been put up on it, but most of it has been vacant since.

Q. Do you recollect anything about Major Gaines being put in possession of it?

A. Yes, sir.

Q. Do you recollect whether Kempner claimed his store or Major Gaines?

A. I think they belonged to Major Gaines and was rented to Kempner. He kept store there several years.

Q. Where was George Belding's storehouse?

119 A. About where the livery stable is now; or, rather, where the St. Louis saloon is.

Q. Do you know anything about the possession of Mills and Butler?

A. Yes, sir; I recollect that the Mills store was right where the Sentinel office is—Goode's drug store.

Q. Did Mrs. Butler have any house there?

A. Her house was the next house below the printing office.

Q. Do you know anything about Major Gaines having possession there?

A. Yes, sir; he had possession there since I can first recollect.

Q. State whether he has had control and acted as owner of it since that time.

A. Yes, sir; he has.

Q. Anybody else claim to own it or control it?

A. There may be somebody who claimed it, and probably may have controlled it some.

Q. State where the Barksdale possession was.

A. That was just above the printing office, about where Wilson's stables are.

Q. State whether you know where the Switzer property was.

A. Yes, sir; right where a man by the name of Allen is living now. The house is standing yet—the back part of it.

Q. Did he have an enclosure there?

A. Yes, sir. I suppose there was a right smart enclosure
120 of some 20 ft. front; had a garden spot there; it run back to the creek.

Q. Do you know anything about Sam. and Oney Macklin having a claim?

A. Yes, sir; Oney was right where Bertsch'- saloon is now. It fronted on Main street and ran back to the creek.

Q. State whether Switzer's claim did not join Oney's claim.

A. I think it did.

Q. And extended down below?

A. Down below the Allen house.

Q. State whether you know anything about this property being enclosed between the creek and the Malvern crossing and further down to the section line at any time and being used for any purpose.

A. It was enclosed and there was a brick yard upon it at one time. It has been enclosed ever since I can first recollect. My father cultivated a portion of it himself.

Q. Who was using it afterwards as a brick yard?

A. Mr. Lecroix, but he was working for Mr. Gaines.

Q. Do you recollect anything about the possession of Sabin?

A. No, sir.

Q. Do you recollect anything about the theatre building?
121 A. Yes, sir; it was just directly below the Hot Springs house and extended down to what is known as the Cohen house now and back to the creek.

Q. State whether there was any log house there.

A. There was some log houses below there—just below where the Cohen house is now.

Q. Can you describe anything about the mill on the other side of the creek?

A. I just recollect about it.

Q. Do you know anything about what improvements were on the east side of the creek between the Malvern road and — before the war and who had possession of them?

A. There was a log cabin there belonging to Mr. Gaines, and a colored woman lived in it, right at the crossing.

Q. Any other improvements below there on the same side that you recollect of?

A. Not that I recollect of.
Q. Was there not a house that Abe Peters lived in?
A. Yes, sir; below the creek—just below the corner.
Q. Was there any fence up?
A. That lot was all fenced up.
Q. State whether you know anything about the old Sabin field and fence and where it ran.
122 A. It started from the Malvern street —, where the cemetery stands now, and ran back to near the depot.
Q. And where did it go then?
A. Then from there up to the foot of the mountain.
Q. You say it ran east to near the depot?
A. Yes, sir; and then north, or rather northeast.
Q. And ran up to what place on the mountain?
A. Up to the line.
Q. And that was all enclosed?
A. Yes, sir.
Q. And from this east side of the fence it was fenced up to the residence of Major Gaines?
A. Yes, sir.
Q. And divided up into different lots?
A. Yes, sir.
Q. Who lived there at that time where Major Gaines' old residence is?
A. He lived there.
Q. How long has he lived there?
A. Ever since I can recollect.
Q. State whether he has been the ostensible owner and had control of those premises fenced up that you have described here on the street.
A. Yes, sir; he has.

Cross-examination.

By Mr. Harrell:

Q. What is your father's name?
A. Lawson Runyon.
123 Q. How old are you?
A. Was 26 on the 6th of January.
Q. You have known Major Gaines all that time?
A. Yes, sir.
Q. You have been living here all that time?
A. Yes, sir.
Q. And Major Gaines was the one who had possession of these improvements you have described?
A. Yes, sir.
Q. Did you ever hear of the Beldin heirs?
A. Yes, sir.
Q. What improvements did they have?
A. The same improvements.
Q. Were they Major Gaines'?

A. They belonged to the heirs.

Q. How do you know?

A. That has always been my understanding. He has always had rental of them. That was what I was alluding to.

Q. What became of these improvements?

A. They were torn down and moved away for more substantial buildings.

Q. While he had control of them?

A. I think so.

Q. Who put up the buildings on them?

A. Different parties leased the ground. He also built some.

Q. Which ones did he build and which the other parties?

A. I don't know. I never paid much attention.

124 Q. Do you know who the Belding heirs were, how many, and their names?

A. George, Albert, Henry, and Maria Gaines.

Q. Where is Albert Beldin?

A. I don't know; Henry is in Texas; it has been three years since Albert was here; Henry was here about a year ago, probably longer.

Q. George Belding lives here?

A. Yes, sir; and Mrs. Gaines.

Q. Is George Belding's name in this claim of Major Gaines'?

A. No, sir.

Q. He has a separate claim?

A. Yes, sir.

Q. Are those heirs of age?

A. Yes, sir; all of them. Albert is over 40, and I think Henry is somewhere near 40; I do not know how old George Beldin is; he must be 38 or somewhere along there.

Q. Do you know Mrs. Maria Gaines?

A. Yes, sir.

By Mr. WALSH:

Q. Can you point out to-day any of those buildings that you have described?

A. I can point where they stood.

Q. Are any of them standing?

A. The Switzer house is; it is where the Allen house is now.

Q. Do you know of your own knowledge who constructed the house?

A. I do not.

125 Q. Can you tell me of any house that Major Gaines built, of your own knowledge?

A. He built that house where the confectionery is, this side of the Hot Springs house. I recollect about his getting lumber. He also built the Hot Springs hotel.

Q. Don't you know that Mr. Stitt furnished the lumber and built it?

A. I don't know about that.

Q. Can you point out one house that Major Gaines built or paid for building?

A. I don't know any that are standing now.

Q. You stated that he was in possession of that house and lived there all the time. Is it not a fact that he lived on his farm and that other parties have had possession of the house from time to time?

A. I don't think he has entirely left his house on the hill; ever since I can recollect he has been living up there.

By Mr. CURL, as attorney for Sumpter:

Q. Were you present when those premises were turned over to Major Gaines?

A. I don't know as I was present; I recollect of my father speaking about it.

Q. When was that?

A. Seventeen years ago. I don't recollect exactly; I was small.

Q. What was there in the shape of improvements when they were turned over?

A. Some log cabins.

Q. Where did they stand?

126 A. Right north of the Methodist church.

Q. Did Mr. Kempner have a garden running down to the foot of the hill towards the Gaines house?

A. No, sir.

Q. Do you know how Mr. Gaines got possession of the Gaines house?

A. No, sir.

By Mr. BENJAMIN:

Q. You knew he had possession?

A. Yes, sir.

By Mr. CURL:

Q. Do you know when he got possession?

A. No, sir.

JACOB W. PARKER sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Jacob W. Parker; age, 70, and reside at Hot Springs.

Q. State how long you have resided here.

A. I came here the 6th of March, 1853.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State whether you was the Jacob W. Parker that a writ was served upon for the possession of a mill and where it was.

A. I forget the writ. I know where the mill was; I gave it up.

Q. Was not a writ of possession served?

A. I suppose so; I gave it up, anyway.

127 Q. Where was the mill?

A. It stood right above the Malvern crossing; the road then crossed differently.

Q. Where Shipley's store was?

A. About the north of Shipley's store; ran right through it, I think; had a post office there. I was postmaster in the house where my son's butcher shop is—right in the fork of the road. I delivered the mail from my north window.

Q. Whose house was that?

A. I first rented it from Wm. Gardner, then Wm. H. Gaines.

Q. Gaines came in possession of it while you were there?

A. Yes, sir.

Q. About the time of the mill?

A. I don't know about that; perhaps about that time.

Q. Look at that and see if it is your lease (handing witness paper).

A. Yes, sir.

Q. What improvements were there in the forks of the road at that time?

A. There was a frame building.

Lease offered in evidence from Wm. H. Gaines to Parker, dated 8th December, 1857, and marked Exhibit No. 1.

Q. Do you know Peter Burke?

A. Yes, sir.

Q. Did he have any possessions here after you came, in 1853?

128 A. I leased from Peter Burke and Wm. Gardner, jointly. I think there was four rooms; I suppose 16 or 18 feet front. There was a yard they had fenced below that; it run down 50 or 60 ft., right south of these rooms.

By Com. COBURN:

Q. Anywhere near the Malvern crossing?

A. It is on the west side I am speaking of; it will go below the Malvern crossing now.

Q. What year?

A. Must have been in 1854 or 1855.

Q. That he was in possession?

A. I mean Burke and Gardner.

Q. When were they dispossessed?

A. It must have been in 1854 or 1855. I paid Gardner rent for a year and a half.

Q. Here is a certified copy of the writ dispossessing you.

A. Yes, sir. What is the date?

Q. It was issued on the 3rd of March, 1856.

A. I leased from Major Gaines; the date of the lease will show.

Q. This shows the date upon which this writ was served for these mills. I was trying to fix the date in your mind when Burke was put out, and whether it was about the same time.

A. I was appointed postmaster under Burke. I was his deputy

in the spring of 1854, and he went to Texas right off, and in
129 a short time I was appointed postmaster. It was about the same time, I reckon.

Q. About the same time you were put out?

A. Yes, sir.

Q. State whether you have known these premises since.

A. Certainly.

Q. Who has been in possession of them since?

A. Major Gaines.

Q. State whether Sabin had any possession on this street or not.

A. Not that I ever knew of.

Q. Do you know what became of the Burke property?

A. It was burnt up.

Q. When?

A. In 1864, I reckon; during the war; and a portion was rebuilt again, I think.

Q. You don't recollect anything about Abigail Sabin having any possessions upon this street?

A. No, sir.

Q. Do you know whether Major Gaines built any houses after he got possession of this property before the war; and, if so, where?

A. Yes, sir; built four rooms, about 16 by 18 ft., with a shed-room back; extended from what we called then the Sumpter property, and ran south; log houses.

130 By the CHAIRMAN:

Q. That was on the other side of the street?

A. West of Valley street.

Q. The Burke property that you were speaking of before is on the east side?

A. All on the west side; it was Gardner and Burke'-, but they turned it over to Major Gaines afterwards.

Q. Do you know whether Major gaines had, any time before the war, this property on the west side fenced up?

A. There was a fence on the west side on the hill, but who put it up, Major Gaines or Sumpter, I do not know.

Q. State whether you know anything about Major Gaines having the east side of the street enclosed as far down as Belding's.

A. It was enclosed, but who had it done I do not know. A man by the name of Switzer had a garden and a house, and I think he joined onto old Olney on the north.

Q. Then below that?

A. Nothing else until you come to a brick yard.

Q. Was it enclosed?

A. I think it was.

Q. Who had the brick yard?

A. Lecroix worked it. I always called it George Belding's when I came down. I never knew anybody else but he and Gaines.

Q. How long have you known this property?

A. Ever since 1853.

131 Q. State whether Major Gaines had been in possession and control of this property and leased it as the ostensible owner since he has been put in possession of it.

A. There was trouble about a portion of it—this Burke and Gardner part. Major Gaines has been in possession as far as I know; he has been the ostensible owner.

Q. And you know of no one controlling it but Major Gaines?

A. No, sir.

Q. Those persons building on it built how?

A. They built upon a lease.

Q. From Major Gaines?

A. Yes, sir; but they repeatedly said he had no right and said they were not going to pay anything.

Q. But they went on there, so far as you know, under a contract or lease?

A. That is my understanding.

By Mr. WALSH:

Q. Did you ever hear of the Government owning any property down there?

A. I have heard that for four years, almost.

Q. How many houses on the reservation constructed by Major Gaines were standing on the 24th of April, 1876, that you know of?

A. I don't know of any except where he lived. He did build, but they were burnt down.

By Mr. HARROLL:

132 Q. Do you know a man by the name of Boatright who had possesion of the forks there?

A. Not in the valley; never knew him.

Q. Don't you know that Boatright has been holding possession in this fork adversely to Gaines?

A. I do not know him.

Q. Do you know J. H. Nichols?

A. I know the old sheriff.

Q. What was he before he was elected sheriff?

A. He was a blacksmith right on the place I have described.

Q. Who built that shop?

A. I think Nichols did; he claimed it; was in possession of it.

Q. When did he build it?

A. Three years ago.

Q. You were asked if the property on the west side of the creek was enclosed, and I understood you to say that you did not know whether it was or not.

A. There was a fence built by somebody. I don't know whether Mr. Sumpter claimed it as his fence or Major Gaines, or whether it was a general fence; but there was a worm fence there made of rails.

Q. And you say it enclosed some log cabins of four rooms of some 18 ft. front each; in what year?

A. They were put up in 1866.

Q. And below them what was the distance before you came
133 to vacant ground, upon which there was no house?

A. There was a space of 20 or 30 ft.; but after that Maj. Gaines put up a house adjoining the one south.

Q. From the lower side of the new house about how far was it to the next improvement?

A. It was an old house; the new house was north of the old one. Below this lot, which I leased from Gardner and Burke, Major Gaines put up on the west side three or four houses, one right after another, of the same style, below Little & Jenkins' store. If you start at Little and Jenkins' there was a post office, then two-story rooms, a ware-room, and a saloon, all covered over with the same roof.

Q. They were log cabins?

A. A frame building.

Q. In what year?

A. When I went there, in 1853.

Q. Who owned them then?

A. Burke and Gardner.

Q. How far from those houses to the next house?

A. 20 or 30 ft., and then Major Gaines put up one adjoining the house still below and left a space between the two.

By the CHAIRMAN:

Q. Whose house was that?

134 A. It was known as the Julian, but, as I understand, it was Belding's or Major Gaines'.

Q. What was the frontage of that house?

A. 16 or 18 ft.

Q. How far below that before you came to another house?

A. I cannot tell, but old Mrs. Belding lived there when I came, and lived there for years afterwards.

Q. And who owned that?

A. She, of course, owned it. She lived there, and she is the mother of the Beldin heirs.

Q. How far below her house to another house?

A. It is right where the house now stands—the adjoining house.

Q. What house is that?

A. We always called it the Kempner house.

Q. Who has the store in it?

A. Nobody; a private family is living there; just this side of the Methodist church; the first house; the house with the gallery on it.

Q. The house that you speak of as being there now——

A. That stands as it was; it stood through all the trouble.

Q. When was it built?

A. Before 1853.

Q. Is that the Kempner house?

A. Yes, sir.

135 By Mr. CURL:

Q. I understood you to say that the Burke and Gardner buildings—the upper ones of them—stood where Little and Jenkins' store is?

A. That is my judgment.

Q Do you recollect whether Mr. Sumpter had a stable in his lot that he had fenced?

A. I think he had a stable in the south end of his lot. There was a big gate that led up to his stable.

ALFRED WHITTINGTON sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alfred Whittington; age, 34, and reside at Hot Springs.

Q. How long have you resided there?

A. Since 1851.

Q. Are you acquainted with Major Gaines?

A. Yes, sir.

Q. And Mrs. Gaines?

A. Yes, sir.

Q. Describe the improvements that were formerly known as Flowers and Barksdale.

A. They were right on the west side of Valley street, as near as I can remember, just south of the Earl house, and ran down 100 ft.—maybe more.

Q. Who had improvements immediately south of that?

A. South of that came Mills' store.

136 Q. What improvements did he have?

A. He had a storehouse on the street, and back in the yard was his residence. I think it belonged, or did afterwards, to Mrs. Butler; I don't recollect what her full name was. The house was occupied soon after the war by the old Burgamer store. It is right along where the printing office is; it takes in about that property.

Q. Do you recollect any house below Mills' claim owned by Major Gaines?

A. George Belding had a store in the next house south of Mills; it was right adjoining the Butler yard.

By Com. COBURN:

Q. This is all on the west side?

A. Yes, sir; and then right south of Beldin's storehouse I think Kempner had a store—about where the livery stable is now.

Q. Below that who occupied the ground?

A. Sumpter's ran on down below Hobson's office; the old well used to stand right in front of it.

Q. The old well is in the street now?

A. Yes, sir; it was then in the neighborhood of Hobson's office.

Q. And how far did it run down?

A. The old well was filled up. The lot extended some hundred feet further down, running towards the hill.

Q. Who was below Sumpter?

137 A. Just below that, on the same side of the street, was a row of one-story buildings; old man Gardner and Burke had a store there; and then some distance below that house came Mrs. Julian; then the next house I remember is the Kempner house; a portion of it stands there yet.

Q. Do you recollect the Runyon house?

A. No, sir.

Q. Do you know whether Abigail Sabin had any possession above there, on the east side, at the forks of the road?

A. There was a house nearly opposite Kempner, where Switzer used to have a grocery. I never knew anything about Sabin's shop there. I never knew him at all.

Q. Where did the road cross in the forks?

A. It must have run right in where Breitie's saloon is, some 80 feet this side of the Malvern crossing. It ran through Breitie's saloon, taking in a portion of Shipley's store.

Q. State whether there was any improvements in the forks of the road.

A. There was a log house that stood there, with two rooms and a hall between and a gallery on one side. On the north side of the Malvern crossing was an old mill. The first man I recollect in that house in the forks of the road was old man Parker. Several other parties lived there afterwards; a man by the name of Davis lived there once.

138 Q. Do you know anything about the possession of old Oney?

A. Yes, sir; she had a house just below to the left, on the same side of the street. She had a little garden.

Q. Can you give the present location?

A. I should judge it to be right where Bertsch's store is; a little below, perhaps, but right in that neighborhood.

Q. Who occupied below?

A. A man by the name of Switzer had a house in there a little piece below.

Q. Do you know what became of that house?

A. No, sir.

Q. Do you know anything about a brick yard being enclosed below there?

A. Below there a house stood as long ago as 1853, which was burned; then afterwards there was a brick yard in that same enclosure.

Q. The ground was occupied and in use?

A. Yes, sir.

Q. Do you know who by?

A. I do not.

Q. Do you know anything about Major Gaines coming in possession of this property and remaining in possession?

A. Only from hearsay.

Q. Do you know of his being in possession and being the ostensible owner and control-er of it?

A. I do not know as I do, only portions of it. There are some portions that Maj. Gaines had possession of that I know.

139 Q. Do you know anything about Major Gaines having built the Hot Springs hotel?

A. To say that I know it, I do not; it is generally believed that he built it.

Q. Do you know anything about the old Sabin field?

A. Yes, sir.

Q. Can you give a description of it as to where it went?

A. It commenced at the southwest corner of the cemetery or Malvern road and ran down to about opposite or probably a little below the old city hotel, and then run back towards the depot; it then run along what is known as the Benton road, as near as I can place it, until it got up to just in back of where Carhart has a residence.

Q. State whether the ground running up towards the mountain was not fenced up.

A. Yes, sir.

Q. Who was it fenced up by?

A. Major Gaines.

Q. Who has possession of this field—the control of it?

A. After Major Gaines got possession of the old residence there I think he had from that time.

Q. When was that?

A. Some time about 1852 or 1853. I know that Mrs. Sabin lived there a long while.

Q. And Gaines has been living there ever since?

140 A. Pretty much all the time since.

Q. So far as you know he has the control of that field and all those houses?

A. Yes, sir; up to the time they were thrown out into the woods by the fences being thrown down.

Q. When were the- thrown down?

A. When the Gaines avenue was put through.

Q. Up to the time of the decree or since?

A. I don't remember whether it was just before or after. It has been the general understanding that they belonged to Major Gaines.

By Mr. HARROLL:

Q. Describe where the fence ran.

A. I could not say anything about the back fence over the hill. I never was up there; a garden was there.

Q. How far did the garden extend back?

A. It was not on Valley street; I am speaking of the Benton road. His garden fronted on the Benton road.

Q. Back of his house?

A. Yes, sir; the garden ran back from the Benton road to his house.

Q. How far from his house eastward did the garden extend?

A. I don't know as I could tell; I should judge the garden extended from the house in a southerly direction.

Q. Do you know where the line of the Hot Springs reservation is?

A. No, sir.

141 Q. Do you know whether he had any improvements in the rear of his house?

A. His stable lot ran back.

Q. How far back?

A. It ran back to opposite a little house where Irish Jimmie use to live. The road ran between Jimmie's and Major Gaines'.

Q. And took a turn toward the mountain?

A. Yes, sir.

Q. And then turned towards the depot?

A. Yes, sir.

Q. State where John Sammons' blacksmith shop was in the fork of the road.

A. John Sammons has had two or three shops.

Q. The one he sold to Nichols?

A. I don't know as he sold any to Nichols.

Q. And one he sold to Boatright?

A. I don't know as he sold any to Boatright.

Q. Where did you say Mrs. Belding lives—the old lady?

A. She lived on the hill where George Belding now lives.

Q. Lived there during the war or at the end of the war?

A. No, sir; I think she was dead before the war.

Q. Where did she live when you last knew her?

A. My impression is that she lived with Geo. Belding on the hill,

By Mr. WALSH:

Q. How many houses were on the reservation before the fire of May or June, 1864, that were built by Major Gaines, to your

142 knowledge?

A. I don't know that Major Gaines ever built a house in his life.

Q. Or knew that he had them built for his own use and benefit?

A. The one where he lives.

Q. What is it known as?

A. The Gaines cottage.

Q. Will you swear he built it?

A. He was living there.

Q. Point out one other building on the reservation before the fire that he constructed except those little cabins known as the Gaines cabins on the road as you go down.

A. I don't know that Major Gaines built any. I don't know whether those cabins are there now or not.

Q. Is it not a fact that nearly all the buildings spoken of were built by other parties?

A. No, sir; I could not say that.

Q. I will ask you how many buildings were on the reservation on the 24th of April, 1876, that were constructed for his own use and benefit.

A. I think the Hot Springs hotel.

Q. Is it not a matter of fact that Stitt furnished the material for that hotel?

A. My understanding is that Major Gaines built the house and rented it.

Q. Do you know of any other?

A. No, sir.

By Mr. BENJAMIN:

143 Q. Do you know who put up all those buildings down there?

A. No, sir.

Q. Do you know that Major Gaines was acting as agent of the Belding heirs, and did you not hear Gaines say that he was agent of the Belding heirs?

A. I never heard him say so.

JACOB W. PARKER recalled:

I desire to state that the log cabins spoken of in my testimony were built before the war—in 1858 or 1859.

ABRAHAM PETERS sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Abraham Peters; age, 45, and reside at Hot Springs.

Q. How long have you lived here?

A. 26 years.

Q. Are you acquainted with Major and Mrs. Gaines?

A. Yes, sir.

Q. State where you resided here before the war.

A. I lived with Mrs. Sabin out there at the grave-yard four years.

Q. Whereabouts is that?

A. Near 300 yards below the grave-yard. There is a two-story building there now; a kind of a yellow house; the City hotel.

144 Q. State whether you know anything about this Sabin field spoken of here and where the fence ran.

A. Yes, sir; Major Gaines had a garden there.

Q. Where was the garden?

A. On the right-hand side of the road. I think it ran down about 250 yards, one the same side of the grave-yard.

Q. Who fenced on the other side of the Benton road towards the mountain?

A. Major Gaines did.

Q. You have heard him testify in regard to these old improvements and where they were situated. Is that testimony substantially correct according to your recollection?

A. About the log buildings?

Q. Yes, sir.

A. Yes, sir.

Q. On Valley street?

A. On the right-hand side.

Q. Who had control of those buildings?

A. Major Gaines.

Q. Do you know how long he has had control of this property?

A. He built them before the war.

Q. And has had control ever since the war?

A. Yes, sir. He has been renting them out or occupying them since.

Q. All this ground from Barksdale down?

A. Mr. Sumpter came in there.

Q. Below how is it?

A. Suppose all below was under his control, as well as I can recollect—all below Sumpter.

145 Q. And no one else?

A. No, sir.

Q. How about the east side of the street?

A. At that time there was a vacant space there; I don't believe there was any building on it next to the corner road where you go across the street.

Q. How about below?

A. Below this was the Sammons blacksmith shop; next was Oney, and next was Mrs. Switzer. Sammons' shop was under the control of Major Gaines. I don't know whether he had anything to do with the Oney building. The brick yard below the Switzer building extended to the street.

Q. Has Major Gaines re-ided here with his family?

A. He has been here ever since I have—26 years. I used to drive his family around.

Q. His family would be here all the time?

A. Yes, sir.

By Mr. HARRALL:

Q. How do you know that Major Gaines controlled these various houses?

A. From what others said.

Q. Do you know whether Mr. Gaines sued Mr. Nichols, the blacksmith?

A. That is my recollection.

By Mr. WALSH:

Q. How many buildings do you know, of your own knowledge, that Major Gaines constructed before the fire of 1864?

146 A. Those three log buildings on the right-hand side going down.

Q. What were they known as?

A. Gaines' cabins.

Q. Do you know of any others?

A. No, sir.

Q. Is it not a fact that the Gaines residence was originally constructed by Mrs. Sabin's mother, and that he made some improvements afterwards?

A. Some portions of that house—the old building—were very common looking, and when he went there the buildings were hardly worth looking at. He fixed them up.

Q. Do you know of any building here on the 24th of April, 1876, that he constructed for his own use and benefit?

A. None except the one he lived in.

By Mr. CURL:

Q. Do you know where Mr. Smith's restaurant is, on the right-hand side of the street?

A. Yes, sir.

Q. How far above that building was Mr. Sumpter's stable?

A. On the ground where Mr. Little's store stood?

Q. How far from the street was the stable?

A. I suppose 30 yards back. At that time they hadn't fenced up in front down to the stable. I think Mr. Sumpter had, on a portion of that ground, a good fence.

HENRY ROBINSON sworn and examined.

147 Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Henry Robinson; age, 41, and reside at Hot Springs.

Q. How long have you resided at Hot Springs?

A. The best portion of my life.

Q. You have heard the testimony here in regard to the old improvements, the Sabin field, and the old fences. State whether they are correct.

A. Yes, sir.

Q. Do you know where the old mill spoken of is?

A. Yes, sir. It is filled up now. It is a little below the Hot Springs house.

Q. Do you know anything about the theatre building?

A. Major Turnbull built it.

Q. Do you know whether Major Gaines became the owner of it or not?

A. Only by hearsay. I understood that he changed it into a hotel and afterwards tore it down, and probably put some of the old lumber into the Hot Springs house.

Q. Where was it situated?

A. Just below the bridge leading to the house known as the Gaines cottage.

Q. Run down to about where?

A. Close to the Cohen house. It is above the corner of the blacksmith shop—between that lot and the creek.

Q. Do you know who has been the ostensible owner and controller of this property?

148 A. Only by hearsay. The log cabins, I suppose, Major Gaines built, because he had his hands at work on them before the war. Some of them have been torn down since the war.

By Mr. HARROLL:

Q. Do you know that Major Gaines owned any of this property described?

A. Only by hearsay.

Q. You say those log cabins have been taken down by his permission?

A. Some have been taken down since the war.

By Mr. WALSH:

Q. State of your own knowledge — any buildings erected by Major Gaines before the fire.

A. I know of those double log cabins.

Q. How many buildings were here on the 24th of April, 1876, that were erected by Major Gaines for his own use and benefit?

A. That house he lived in.

Q. Who built that?

A. He repaired it.

Q. Was it not built by Mrs. Sabin?

A. A portion of it.

Q. Do you know as to whether it is a fact that Major Gaines brought an action of ejectment against all his tenants, and then bought them out or compromised with them?

A. I don't know how he got possession.

In the Matter of the Claim of WILLIAM H. GAINES and MARIA GAINES, No. 784, Consolidated with Many Others.

149 TUESDAY, *February 12th*, 1878.

Forenoon Session.

ALBERT BELDING, being first duly sworn, testified as follows:

Questioned by M. W. BENJAMIN, in behalf of Gaines' claim:

1st Q. Look at the signature attached to this receipt and state whether you know it to be the signature of Mr. Hempstead, and whether he was acting as receiver in the land office at Washington at that time.

A. This paper I have not seen for 25 years. In December, 1851, I went to Washington, and went to the land office there and paid the receiver, B. F. Hempstead, $200 in silver for a quarter section of land embracing the Hot Springs, and he gave me a receipt for it. This is that receipt, to the best of my knowledge.

2nd Q. To whom did you deliver it?

A To William H. Gaines.

3rd Q. Have you any claim on any of this land?

A. I am one of the heirs of Ludovicus Belding. Major Gaines represented me, with the other heirs. He named my sister.

4th Q. State whether Mrs. Gaines has been the only one of the Belding heirs that has resided continuously on this land.

A. I think so. I have no claim to this quarter section except through Gaines and wife, as the representative of the Belding heirs.

150 (NOTE.)—The above testimony is offered by the —, but the commissioners reserve all questions as to its admissibility.

JOHN H. LACROY sworn and examined.

Questioned by Mr. BENJAMIN, representing Gaines claimants:

1st Q. State your name, age, and residence.

A. John H. Lacroy; age, 40; residence, Cove Creek station, Hot Springs county.

2nd Q. Did you ever reside here?

A. Yes; I came here in 1858.

3rd Q. State whether you are acquainted with the premises then claimed by Wm. H. Gaines; and, if so, state the circumstances connected with your acquaintance with it.

A. On the west side of Valley street there was a little log house that I rented from Mr. Gaines myself and lived in it about 3 months. Right north of that he had a double log house that I rented and lived in for a year. Squire Towle is living right in front of where the little log cabin stood, and Johnson and Foreman are about where the next one was. There was another double log cabin further this way. I think Mr. Hilfridge's house is right over it. There were four log cabins. The court-house is over one of them. I built the chimneys for those houses. North of that there was a house built by Mr. Burke. I built the chimneys for Major Gaines. All
151 north of there were renters, so far as I know.

4th Q. How far north were they paying him rent?

A. As far north as Williamson's livery stable. I heard the men that lived in those houses say they were paying him rent.

5th Q. What improvements were there on the east side of the street at that time?

A. Beginning at the south, right this side of George Belding's there was a fence and some land that had been cleared up. I made brick for Major Gaines there in 1859. There was an acre on that side or over. Right north of that there was a little frame house that Mr. Second or Legarde lived in. They told me they were paying rent to Major Gaines. It was commonly known as the Sweiptzer house. The next north of that was a hotel that Bill Davis had at that time. That is standing there right under Shipley's storehouse; Major Gaines controlled that. Then 40 or 50 feet further north there was a double log house, put up at the same fall. I put the chimneys to it. Right north of that there was a theatre building, said to have been put up by Mr. Trumbull; Major Gaines controlled that, and I worked on the building for Major Gaines. I partitioned it into rooms for a hotel. That theatre stood about where Mr. Kimbell's store is. It was a very long house and a very large house,
152 from 50 to 70 feet long, with the length up and down the street. Up towards the Hot Springs hotel, on the east side of Hot Springs creek, commencing from the yard fence, he had a residence and yard fenced in, the same that is there now. There was a field cleared southeast of his, of ten of fifteen acres, that was enclosed and that was said to be his. That included the country south of the Gaines residence to a point about 40 steps below the grave-yard. The south line run towards the depot two or 300 yards. The fence run right along the road, going to Benton on the south. I think

Gerhart and Williamson are in that field now. There was no building inside of the field. A portion of that field was in cultivation. It had a good fence around it. East of the creek and west of the Malvern road there was a stable and a little cabin that Ed. Peters kept some horses in before the war. There was a garden down next to the Sabin lot that I got my clay from to make these bricks. That was a little southwest of the grave-yard. These enclosures, generally speaking, have been kept up by Major Gaines. He has gen- kept possession of them.

Cross-examined by Mr. CURL:

153 6th Q. In 1858, the time of which you speak, who occupied the property between where the present St. Louis saloon is and where Sutton's store burnt out a short time ago on the west side of the street?

A. Mr. Sumpter—John T. Sumpter's father.

7th Q. Do you know whether Mr. Sumpter paid any rent to Major Gaines?

A. It was my understanding that he did, but I do not know personally.

8th Q. Do you recollect what improvements Mr. James Sumpter had along there?

A. He had a little hotel there and a stable and lot further down towards the Suttons. I believe he had a garden right back of the house and a little further below.

9th Q. How long was that hotel?

A. It would accommodate 15 or 20 boarders. It was one story. There was a little house standing back of the hotel, due west, for the servants.

10th Q. Do you know what building now occupies the place that Mr. Kempners' occupied?

A. The El Paso sale stables does.

Re-examination.

Questions by Mr. BENJAMIN:

11th Q. The- Mr. Sumpter did not occupy that?

A. No, sir; it was below that he occupied.

Q. 12. Do you know whom Mr. Sumpter recognized as his landlord?

A. Major Gaines.

13th Q. Do you know who Mr. Kempner recognized?

—. ——.

154 WILLIAM CURL sworn and examined.

Questions by Mr. BENJAMIN, in behalf of Gaines' claim:

1st Q. State your name, age, and residence.

A. William Curl; age, 31; residence, Hot Springs.

2nd Q. Are you acquainted with Major Gaines and wife?

A. Yes, sir.

3d Q. Do you know the property they claim?
A. Some of it.
4th Q. How long have you known it?
A. I have been employed by Major Gaines in building. I was employed by him to build some rooms immediately north of and in connection with the Gaines residence. I have had some acquaintance with it for 12 years. I am a carpenter and builder. Mr. Gaines honored the orders that I gave for money for the erection of the buildings. I was in the employ of Major Gaines in erecting two storehouses, situated south of the Garland house, which he furnished the lumber, nails, and windows for. He furnished all the lumber and paid for the work. One of the cottage houses near the Malvern road—near the southwest corner of the cemetery, the west side of the Malvern road—I helped to build. Those cottages houses have four rooms each. I built them for him on what was known
155 as the lower Benton road, with four rooms in each. He furnished the materials and paid for the work. I was employed by him as foreman, and he paid the wages of the hands on my orders. I was in the employ of the contractors in the erection of the Hot Springs hotel; Major Gaines was the employer, and paid the orders given by the contractors, to my certain knowledge. I was in his employ to the erection of a little office immediately north of the Hot Springs hotel that was built for the use of and occupied by one Dr. Spence, and I know that the rooms were built by Wm. H. Gaines or under his consent and authority; that is north of the hotel. There was one right near Malvern crossing—I think probably the second building below Malvern crossing on the east side of the street—occupied by William States now as a saloon; that is on the west side of the creek and on the east side of the street. My boss, from whom I learned my trade, was employed to build that building. It was built by Major Gaines. He furnished the materials and paid the hands. It was built for a laundry house and was so used for awhile. There was another building put up down there that is known as the Texas house, that was known originally as Caver's store. I was foreman of the erection of that building,
156 and Major Gaines paid the hands. It was built for Mr. States, but the hands looked to Major Gaines for their pay and got it. It is a two-story house now; it was originally a one-story house. I think it is the first building south of Kimbell's store; it cannot be more than the second building south of there.

Here was introduced in evidence:

FEBRUARY 26TH, 1878.

Major Benjamin offers in evidence the proof of the pre-emption and application of Lydia Belding, widow of Ludovicus Belding, certified to by the clerk of the Court of Claims as being taken from the original papers placed in the office by the Secretary of the Interior, marked X Exhibit; also certificate of the receiver and register o the land office, Camden, Ark., of the application of Lydia Belding, marked Exhibit Y; also certificate from the General Land Office

that B. F. Hempstead and W. H. Ellis were land officers at Washington, Ark., in 1851 and 1852, marked Exhibit Z.

Conveyance from George Belding to William H. and Maria Gaines, dated October 20th, 1877; also deed of Henry Belding to William H. and Maria Gaines, dated on the 9th day of November, 1877; also tax receipt for taxes of 1874 on this property, in favor of the estate of Ludovicus Belding; also statement signed by
157 the clerk of Hot Springs county, showing by whom the taxes had been previously paid; all of which papers are herewith.

GEORGE BELDING sworn and examined.

Questions by Mr. BENJAMIN, representing Gaines' claim:

1st Q. State your name, age, and residence.

A. George Belding; 45 years; Hot Springs.

2 Q. How long have you lived here?

A. Since the spring of 1852, except three years during the war.

3 Q. State if you know anything about the possession of the Belding heirs, or of Major Gaines for them, and how they came into possession.

A. We came into possession of the most of it by the action of the courts, writs of possession, &c. The part that came from Mrs. Sabin was bought from her by the Major; that house occupied the ground where the St. Louis saloon is now; that house he bought of Mrs. Sabin at the same time he bought the property where his residence is, &c.

4 Q. Commence now at the south end of the tract and state what improvements were there in 1860, and who controlled them.

A. Before 1860 there had been some old cabins that may
158 have been destroyed before that time. Above the line there was a little house owned by Runyon. There was a man lived in it by the name of Weaver, in 1859 or 1860. That was just south of the Kempner house, between there and the south line of the Hot Springs quarter. He was a tenant of Runyon's, who owned the house then. The next house to that was the Kempner house, which stands there now, and is occupied by a man by the name of Oxford. Next to that was a house that presented one corner a little more to the road than the other, which was purchased by my mother from a man by the name of Williamson. That old house partly fell down, and was torn away. That was this side of the Kempner house and almost joining it. It would be about McCaffrey's, or probably a little below that. The next house was a little old log cabin that old Mrs. Julian lived in, and that was known as the Julian cabin. I knew that house as long ago as 1855 or 1856. Major Gaines got possession of that Julian cabin and built another cabin to it about the time he built the other row of cabins. He built another cabin to it, leaving a little space between, and put a chimney right in there between the two houses. About 25 feet still further north of that he built two more cabins, with a chim-
159 ney between them. He had a row of four double cabins there with shed rooms attached, and there were four rooms, I think

to all of them. That row of cabins would extend probably 250 feet, about, above where Horton's now stands. Next above those cabins were the Burke possessions. A man by the name of George Asher sold goods there at one time, a Jew. There was quite a row of houses there. I think four or five rooms. It was quite a long row of cabins. There was a man by the name of William Hutt sold goods there afterwards. Burke and Gardner bought Hutt out, and sold goods there for a couple of years or so, and then old man Gardner's son blowed the thing up with powder and matches. That was the last that I ever knew of that house. From the big, hollow, old red oak tree that stood about the corner here (reference to plat) there was an open place that Sumpters afterwards fenced up. There was an old well that used to be there which is now in the street and filled it. It stood directly in front of Sumpter's grocery. They had a large room that did not come out flush with the street; probably 20 feet square. The fence ran diagonally back to Sumpter's house lot. Then Sumpter's building came up north. They had
160 a long row of buildings. Their dining-rooms was a long room this side of the grocery house. I do not know how many rooms they had there, but probably about five rooms. They extended up to where Kempner sold goods. They had a garden enclosed back of that. It was of the length of that row of buildings and extended probably further. Mr. Kempner had a long store-room and probably two other rooms south of that that he used as a warehouse, that joined onto the Sumpter building. Then above that—north of that—was the storehouse that I occupied. That was about 24 feet long, and presented the side to the street, as all the houses did at that time. The St. Louis saloon now occupies the same grounds. The livery stable stands right on the ground where Kempner was, or at least a portion of it. I am not sure but the old house would run a little south of that. Still north of my storehouse there was a yard with a little dwelling-house standing back from the road that Mrs. Butler used as a residence and afterwards sold to Mills. Right north of that on the street was a little storehouse that presented the end to the road, that Mills occupied. Right north of that again was a little row of one-story buildings occupied by Barksdale and at one time
161 by Flowers. Right in front of the Wilson livery stables (the street was very narrow till after the war) was a little house that was used as a bar-room by Barksdale and other parties. Before Barksdale had it it was used by a man by the name of Benson. It was part of the Barksdale possessions. These are all the buildings that I know of on that side of the street. On the other side of the street, about where the Hot Springs hotel is, an old Dutchman named Sweiptzer had a grocery house. Below Sweiptzer's there was a little cabin that was used sometimes by a man by the name of Dugan, on the corner very nearly where Dr. Taylor's office is now. The theatre building was a little below the bake shop. It was built by Trunball, who failed in the business and sold the house to me and Major Gaines. It cost about $1,700. Below that were 2 or 3 log cabins that Major Gaines built, and below that was a blacksmith

shop, and below that some old houses that I have known ever since I have been at Hot Springs. They were occupied by a man by the name of Hooper. They were just above the Malvern crossing. I speak of the crossing as it was then, probably a little this side of Brighty's saloon, right above the crossing of the creek. Right diagonally across the Malvern road was an old frame house that presented
the end up north. There was a little gallery next Valley
162 street, and there was another room and a little hall between.
That was occupied by old man Parker some time, and the post office was in it. There was a fence around it. The well was right in front of old Ony Macklin's door, who kept and sold cakes there. She had a little yard fence- in. Below that was Mr. Sweiptzer's residence. He lived there and sold whiskey in the shop I described before. That was enclosed. Before the war there was an enclosure where Lecroy made bricks for Major Gaines. Below that there was an old shanty that McDaniel lived in and that burnt up. After that it was enclosed and a brick-kiln was put up there. Since that Major Gaines fenced that in with a good fence. I had a fence 7 or 8 feet high around my garden. My possessions extended over onto the Hot Springs quarter, and his enclosure joined onto mine. I think it was enclosed all around since the war. I do not recollect whether it was before the war or not.

5 Q. State whether before the war the ground on the west side of the creek was all enclosed.

A. I cannot recollect. There was a fence on the back side of this line of improvements built by the Sumpters, but I do not recollect
about any front fence below the Burke possessions. Above
163 there was no fence, because there were buildings there, except
Mr. Sumpter had built a fence from the Burke house to his. At one time they had a rail fence that ran down below this big room that I told you about, where there was a crazy man stayed, and he broke loose one day and ran with a chain fast to him and hid in one of the fence corners there, and that made me remember that the fence stood back from the road. I think after that Mr. Sumpter straightened out that fence even with the road. Their stable and horse lot sat back very nearly where the Sumpter house is now, and there was a passage-way left there to get up into the Masonic lodge-room that was up on the hill there, not far from Mr. Little's. The Sabin field there, I do not know just how it was shaped. It was quite a large field at the time Major Gaines got it. There was more than one-half of it that he cut off for her. He ran his fence right on the south line of the Hot Springs quarter from the Malvern road to the back side of her field, wherever that was, and then it extended up to the Benton road. There were two Benton roads used then, but
mostly it was *but mostly* the right-hand one going from here
164 towards Benton that ran right up to the hill there. Major
Gaines' fence ran right up to that. There was another road that ran where the Benton road now does. I lived there with Major Gaines, and I know that afterwards he extended that fence across that road and turned the entire travel around that crooked corner that was up there.

6 Q. State whether Major Gaines is the only one of the Belding heirs that has resided on this property continuously.

A. Yes.

7 Q. And whether with Major Gaines she has not exercised control of it.

A. With the exception of the little strip that I had down there. They are the only ones that have lived on this quarter except myself. I was the first person who took possession for him of these houses when he bought them from Mr. Sabin.

8 Q. Who has had the control and management of it?

A. Major Gaines, all the while.

9 Q. Do you know whether Mr. Sumpter leased to Major Gaines and paid him rent?

A. I do not, but I have heard that he did. I know Kempner leased a storehouse from Major Gaines and paid him $12 50 a month rent. I never saw the lease

Cross-examined by JOHN M. HARRELL:

10th Q. Are you one of the Belding heirs?

165 A. Yes.

11 Q. Have you any interest in the prosecution of this claim by Major Gaines?

A. Not that I am aware of. I made him a deed on the 20th October, 1877.

12 Q. What was the consideration?

A. I do not know what it would amount to. I am indebted to Major Gaines or have been, and I do not know how liberal he would be if he gets this thing through.

13 Q. Will you measure his future *liability* by the past?

A. Sometimes he has been pretty liberal, and sometimes he got a little stubborn and was just the reverse.

14 Q. Do you say he has been in possession of all this property 25 years?

A. No, sir; I said the balance, except the Sabin property, he got through the courts, and I do not recollect just when the actions took place. I suppose it was about 1856, probably.

15 Q. Have you, as one of the Belding heirs, shared the income derived from the rents and profits of that property?

A. No, sir. The Major was at all the expense of conducting the suit, and he had a right to the rents.

16 Q. He never accounted to the heirs?

A. He never did to me.

17 Q. Who are the other Belding heirs?

A. His wife, Albert, and Henry M.

166 18 Q. How did he present his claim in the court?

A. In the name of the Belding heirs.

19 Q. Did he pay taxes on this property?

A. Yes; for the Belding heirs. I have seen it on the tax book taxed to the Belding heirs.

20 Q. When did he make the Sabin purchase?

A. In the spring of 1852.

21 Q. Has he been upon the land ever since?

A. I do not know that he has been on it personally. He has travelled considerably. Most of the time he had been residing there. I do not think his family have resided in Chicot county since that time only on a visit. About 1876, at one time, his niece, Mrs. White, ran that house as a boarding-house, and she and his family lived on the farm. There has been some of the family always there. They always claimed it as a home.

22 Q. Did not Major Gaines and his family reside on his place near Sulphur Springs while Mrs. White kept that boarding-house?

A. I think likely he did.

23 Q. Did they not live in Chicot county sometimes?

A. I do not think he did. I do not think he has owned that plantation for 8 or 9 years. I do not know just when he got out of the possession of it, but I guess it was when he went into bankruptcy and his creditors seized it.

167 24 Q. Did they seize his property on the reservation here?

A. I do not think they did.

25 Q. That was the property of the Belding heirs?

A. He built houses here.

26 Q. Did he claim them in his own name or that of the Belding heirs?

A. I never inquired into that. I think he paid taxes on the whole thing. He did not build them for me, and never proposed to give me anything out of them.

27 Q. Did not he live in Texas awhile?

A. I think not. He went there during the war to have his eyes operated on. His family was here most of the time, and I guess all the time. He was in Texas only a short time.

28 Q. You say he obtained possession of this property by the action of the courts?

A. The most of it, not the most in bulk, but that he obtained the possession for the Belding heirs from most of the parties who had possession of it.

29 Q. Do you know where Mr. Nichols' blacksmith shop was?

A. Down there where Booth has a butcher shop, just below Shipley's store. The candy shop is in a part of it.

30 Q. Who is in possession of that?

A. I think Mr. Nichols is.

31 Q. Did Major Gaines attempt to get possession of it?

168 A. He has a lawsuit pending.

32 Q. Did you know a man by the name of Boatwright?

A. Yes; he was about the shop there with Jolin Salmons some time.

33 Q. Do you not know that he bought Salmons out?

A. No, sir.

34 Q. You stated that Major Gaines got possession of these peices of land by the action of court. How do you know that?

A. By his taking possession at the hands of a public officer.

35 Q. Do you know whether Boatwright got possession of this property in the forks of the road?

A. I have been told so.

36 Q. How did you buy the Turnbull theatre?

A. Turnbull was several hundred dollars in my debt and I had to take the building in order to get my money. The Major and I bought together, and afterwards I sold my half to the Major and he paid me costs for it, more or less. I think the entire cost of the building was $1,700. Major Gaines cut it up into rooms, and I understood it was to be used for a boarding-house.

37 Q. Do you know whether he claimed this property in his own name or that of the Belding heirs?

169 A. In his own name, I suppose. It was personal property, and he bought of me. I did not consider that we had any title to the land. I expected at the time that he would get a title.

38 Q. Whatever became of all those old buildings that you have described?

A. I suppose they all got burnt up except some that are standing. The old grocery house that I sold goods in was moved down to the Sentinel office and is in the rear of a part of the house, and the old Butler residence is in the rear of a part of that Job Ward building, very close to the St. Louis saloon, on the north side. I do not believe there are any more standing on the west side till you get to the Kimball house. That is standing. On the other side the old Sweiptzer house is standing in the rear of a part of the Allen house now. There are some cabins there that the Major had, south of the theatre building, which was occupied since the war by a man by the name of Vose as a bakery and afterwards by Bush. That is all I know of unless there are some old log cabins across the creek there that a man by the name of Puckett had. On the east side of the creek there is not a vestige of a house on the Sabin place that was there when I first came here. The log kitchen that is

170 there was built afterwards. His dwelling was built entirely new. The old house was torn away.

39 Q. How far east did the south fence go?

A. It went past the colored church and to the turn of the hill, but not down the hill to the other side.

40 Q. Did the fence on the east side of that lot run south to Gerhart's house, where he lives now?

A. I think it did. It turned and went right up the hill.

41 Q. There was no Gaines avenue there then?

A. No; there were two Benton roads, and the main travel ran along by Major Gaines' fence.

42 Q. Had Major Gaines a power of attorney from the Belding heirs?

A. I think he had.

43 Q. Do you know the terms of it?

A. No, sir; I was a minor then and did not execute it.

44 Q. Was there a power of attorney executed here lately?

A. Yes; three or four years ago. I signed it.

Cross-examined by B. F. RICE, counsel for J. D. Chidester:

45 Q. You say Kempner occupied the grounds covered by the El Paso stable?

A. Yes; there was a row of cabins that extended along the road, and he occupied these. I do not think he occupied the
171 back part of the ground.

46 Q. When was it those cabins were there?

A. I do not recollect when they were built, but I sold goods there in the fall of 1853 and up to the time of the war. They were said to have been burnt down during the war.

47 Q. What building was erected next on that ground where the stable now is?

A. I do not know of any but the stable. It was the next erected.

Questions by B. F. RICE, as attorney for Hot Springs R. R.:

48 Q. Was the Sabin property that Major Gaines bought, the most of it, south of Gaines avenue?

A. I do not think it was.

49 Q. Was the field south of the Gaines avenue enclosed by itself separately?

A. Yes; and it took in the cemetery. He ran the division fence between him and Mrs. Sabin that ran by the road, and he had a garden patch on one side of the fence and she had one on the other side.

50 Q. Where were the Sabin houses?

A. Right where his residence is now. They were in an enclosure by themselves, not in the same enclosure with the field. There was a road between run-ing down to the Malvern road. He had
172 a garden and horse lot and stable on the hill close to where the Episcopal church is. East of where his residence is he had a horse lot. There was a cross-fence between it and the house. There were several enclosures running east of the house. They were not in the same enclosure with the field; there was a road between.

Questions by JOHN M. HARRELL:

51 Q. Did you execute that deed on the date written in it?

A. Yes.

52 Q. You and your wife executed it on the 10th October, 1877?

A. Yes; that is her handwriting.

Questions by A. CURL, for Abraham Kempner:

53 Q. You said something about a cottage house occupied by Mr. Kempner near the south line of this claim, on the west side of the street.

A. Yes.

54 Q. Who built that house there?

A. I do not know who built the first building that was put there. I know Kempner had a log house built in the rear of the other for a kitchen.

55 Q. Was it as long ago as 1852 or 1853?

A. No, sir.

56 Q. What other improvements were there when you first knew the premises?

173 A. I never noticed anything but a little row of frame houses and probably an enclosure. There was a well at this end of the house.

57 Q. How long did Kempner live there?

A. Up to 1861 or 1862, after the breaking out of the war.

58 Q. Are the same buildings that were there when you first knew the place there now?

A. Yes; the same houses, and probably a log house back of it.

By A. CURL, as counsel for J. J. Sumpter:

59 Q. What became of the house known as the Malole house, that stood where the St. Louis saloon is?

A. I sold goods in it till the fall of 1861. It was said to have been burnt down during the war. I removed to Saline county in the fall of 1861. I came here on the 3rd of March, 1863, and remained until the fall of 1863, and then went to Texas, and came back on the 10 of December, 1865. I had the house built that is there now myself in 1867.

60 Q. Do you know who built the storehouse occupied by Kempner, north of Sumpter's hotel?

A. No, sir; the first I ever knew of them there was a little log grocery somewhere about there. When I moved here in 1852 they were there and Kempner was doing business there then.

174 61 Q. Do you know when Mr. Sumpter first came into possession of the hotel property?

A. No; I recollect of seeing the old man Sumpter when he came here. I recollect of his family being here in 1847. I left his family in possession of that house when I went to Texas. James Sumpter himself was dead then; he died in the summer of 1861.

62 Q. You speak of hearing some of them say something about a contract between Gaines and Sumpter. What was your understanding of that contract?

A. My understanding was that Mr. Sumpter paid Major Gaines a consideration for the rent of the house, simply sufficient to show that he acknowledged him as his landlord. I believe it was a dollar a month.

63 Q. Did you understand that in the event that the Belding heirs failed to secure a patent under their certificate of entry Mr. Sumpter was to remain there as a squatter?

A. No, sir; I never had any understanding of the kind.

64 Q. Do you recollect the fence that ran along the north side of the Sumpter possessions before the war?

A. Yes; there was a picket fence there that ran west some distance. There was a considerable enclosure back there; they had a vegetable garden in it.

65 Q. Was there a vegetable garden in the rear of where the stage stable now stands?

175 A. Yes; it ran all along there.

66 Q. Does not the stable occupy a part of the ground occupied by that garden?

A. I think it would; it reaches back a considerable distance.

67 Q. Is the street wider now than it was then?

A. Considerably.

68 Q. What building now stands where the north room belonging to Mrs. Burke originally stood, on the west side of the street?

A. I think it was along where the Little and Jenkins building was.

69 Q. You said something about a passage-way going back to where the Masonic lodge met.

A. Yes.

70 Q. Going back there, did not parties pass through this large gate you speak of?

A. I think Mr. Sumpter fenced that off. I think there was a big gate there.

Questions by MURPHY and WARD, in behalf of Benj. W. Goode, Adams, Sumpter, Vaughan, and other claimants:

71 Q. Who built the house that you have spoken of as being on the land in 1860?

A. I do not know that I can state as to all. The log cabin that I spoke of, on both sides of the street, Major Gaines built.

72 Q. Did the Belding heirs build any of them?

A. No, sir.

73 Q. How many of them did Major Gaines build?

176 A. There were three double cabins he built, and he built one cabin up to another one that was there.

74 Q. Did he build one-half of the houses that were there in 1860?

A. Less than one-half of them.

75 Q. When did he get possession of those houses under the order of court?

A. About 1856.

76 Q. The houses were built at that time and parties living in them?

A. Yes; in some of them.

77 Q. How many of those houses did he or the Belding heirs or all of them together buy?

A. I do not know of any being bought except what was bought from Mrs. Sabin.

Questions by JOHN M. HARRELL:

78 Q. Have you the written agreement referred to in this deed?

A. Yes; at home.

Questions by W. P. WALSH, appearing for 31 claimants:

79 Q. You are a brother-in-law of Major Gaines?

A. Yes, sir.

80 Q. State how much property was on the Hot Springs reserva-

tion after the fire of 1864 constructed by and for the use and benefit of Major Gaines, on the land claimed by him in his petition here, or since the war, and that he was in possession of on the 24th of April, 1876.

A. There was a row of cottages in his yard that has been
177 built since the war; then I think there was an extension up the mountain. There was the Hot Springs hotel.

81 Q. Do you know that he built that?

A. Yes; I furnished him part of the lumber that went into it.

82 Q. Who furnished the money?

A. Major Gaines.

83 Q. What did he pay for the Sabin property?

A. I understood he paid $700.

84 Q. Do you not know it was the understanding that he was to deed that property to the Sabins; that it was merely a mortgage?

A. No, sir; I do not.

85 Q. How much of this property do you get if Major Gaines succeeds?

A. I do not know how liberal he may be. I will get a small part of it. I do not know — much. I am an interested party, sir.

86 Q. Is it not a fact that Major Gaines leased this property from Sabin before he purchased it? Do you not know that?

A. No, sir; I do not know of anything of that kind. He occupied it after he bought it. I never heard of his leasing it.

CHARLES BROWN sworn and examined.

Questions by HAMILTON BENJAMIN, in behalf of Gaines *et al.*:

1s- Q. State your name, age, and residence.

A. Charles Brown; age, 59; residence, Hot Springs county.

2 Q. When did you come to Hot Springs?

178 A. In May, 1851, I came here from Chicot county. Major Gaines raised me from a ten-year-old boy. I lived with him till 1861.

3 Q. Describe this Sabin field and its fences.

A. When they measured off the land that he bought from Mrs. Sabin, Henry Belding laid the worm for the fence between, and my boy and Billy Gaines built the fence. You commence at the corner of Runyon's fence, across the creek on this side. We commenced on the west side of the creek and crossed over and went east. Jordan Flowers is living on the line now. It ran east till it got beyond Jordan Flower's, and then it turned off and ran north and south and came on Hot Springs mountain this way.

4 Q. Taking this one field, did it go to the Benton road?

A. Yes; on the south side of the Benton road he had a garden, and on the south side to the turn of the road, the curve of the road, he had three different patches—a corn patch, an oats patch, and a potato patch.

5 Q. Did it run north to the Benton road?

A. It ran north to the mountain and did not fence up the road

This field ran north to the Benton road and then came along in front of his house. It came up the Benton road to the valley and then right down to the curve of the road and took that in.

179 On the north side of the Benton road we had a calf lot running back east about 150 yards.

6 Q. On the west side of Valley street, Major Gaines' possessions, was there a fence enclosing that before the war—the whole thing?

A. Yes; there was on the right-hand side of the street. He had us fence it up because the parties complained that they could not keep the cattle and stock out of their houses.

7 Q. Do you know anything about the house Mrs. Sabin had on the east side of the creek and west of the street, above the crossing at one time near where the old theatre was?

A. I do not remember whether she owned that or not. Gates and Montgomery occupied it.

8 Q. State whether below the crossing it was fenced up before the war—on the west side of the creek and the east side of the street.

A. Not to my recollection. There was a passway between the creek and the Major's house, lot, and garden on the east side of the creek. On the west side it was open. The brick yard was fenced up on the south side of the road.

9 Q. State if you know of Mrs. Gaines in 1865 fencing up the lot opposite the Hot Springs hotel.

A. Yes; she had Wesley Matthews to lay the worm in April, 1865, and we picked rails from across the creek and put up the fence.

180 10 Q. How much was fenced up?

A. I cannot say how much, but there was a pretty good scope that is now idle; mighty near every bit of that ground that is in front—that is in front of the Sumpter house.

11 Q. How long was that fence there?

A. It was there in 1866; some of it—part of the south line.

Questions by JOHN M. HARRELL:

12 Q. Did you belong to Major Gaines before the war?

A. Yes, sir; I had been out of his employment ever since January, 1866. I live on the Malvern road, about a mile from his farm.

13 Q. How far was that horse-lot fence from the house?

A. There was a big road between the calf lot and the horse-lot gate and the house.

14 Q. His east fence was how far from the house?

A. About 150 yards.

Questions by Mr. WALSH:

15 Q. What use did they make of this ground after they fenced it?

A. He kept calves in there and raised potatoes. I did not work for him, though, in 1865. That was before the war. Mrs. Gaines put it there in 1865 for a garden, but she did not put it to any use.

Questions by A. CURL, as attorney for John T. Sumpter:

181 16th Q. What sort of a fence was it she had put around the Sumpter lot in 1865?

A. A rail fence 8 or 9 rails high.

17 Q. Did you see it put there?

A. I saw it afterwards. It was burnt down, and I went along where it had been and picked up the rails.

18 Q. How do you know Mrs. Gaines built it?

A. There was nobody else to build it, and she told me she built it. There was nobody here but a few old women and Dr. Colten (or Golden) and Mr. Davis.

19 Q. When did the balance of that fence leave there?

A. I do not know.

By Commissioner COBURN:

20 Q. Who cultivated that garden?

A. No person at all. It was used in old man Sumpter's lifetime as a garden and horse lot. The parties came in afterwards that are on it now, and they did not fence it. They came in in the fall of 1865. There was no house there. They lived at Willoughby's place, and they came there to build.

11 Q. Who did?

A. Mr. Sumpter.

12 Q. Did they take possession of that lot in 1865?

A. Yes, sir.

13 Q. Was the fence standing when Mr. Sumpter returned and took possession?

A. Part of it was on the south.

182 15 Q. You are certain that Mrs. Gaines did not use it after it was fenced up?

A. She did not plant a seed in there. My boy owns that. He put that fence there; him and Billy Gaines.

JOE CRITCHER sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Joe Critcher; age, 25; Hot Springs.

2 Q. State whether you were employed by Mrs. Gaines in 1865 to fence up the property opposite the Hot Springs hotel called the Sumpter property.

A. Yes, sir.

3 Q. State whether you made the fence.

A. I hauled the rails and Mr. Matthews put the fence up with the help of the old man's son and myself.

4 Q. Did you make a good fence?

A. Yes.

5 Q. What ground did you fence up?

A. About an acre and a half.

6 Q. Where was the south line of the fence?

A. Right in front of Major Gaines' old building, back of the Hot Springs house.

7 Q. Was there a rail fence?

A. Some rail and some plank.

Questions by Mr. CURL:

8 Q. How far back did that enclosure extend?

A. Far enough to make an acre and a half square. It was
183 either that or more. It was a good, big garden.

9 Q. What time of year was that built?

A. It was in the early winter.

10 Q. How old were you then?

A. About 18 or 20.

11 Q. Was that while the war was going on?

A. The fence was there when Mr. Sumpter got home from Texas, and when he got back he took possession. It was built before anybody got back from Texas.

12 Q. Who told you the fence was there when Mr. Sumpter returned?

A. I know it was there. He had to tear some of it down before he could get it fixed like he wanted it. I saw the fence pulled down.

13 Q. Who told you it was in 1865 that fence was built?

A. As a matter of course I knew about the time the fence was built.

14 Q. What year of our Lord is this?

A. This is 1868—no; 1878, I mean.

15 Q. How were the planks put up on that fence?

A. Some of them were nailed to a kind of posts set in the ground.

16 Q. How did Mrs. Gaines use that lot after it was fenced?

A. She did not use it, because her stock died before she got to use it. They did not raise anything in there.

184 ELIJAH HARRIS sworn and examined.

Questions by Mr. BENJAMIN, for Wm. H. and Maria Gaines:

1 Q. State your name, age, and residence.

A. Elijah Harris; age, 48; Hot Springs.

2 Q. State whether in 1874 you were employed to build some fence for Major Gaines.

A. Yes; I built some fence running very close to the old stable, on the Benton road, and running from there half a mile, to where old man Jimmy lives, close to the depot. We came up from the mountain to the Hot Spring house and closed it, and just the same way on the other side. We enclosed the Baptist church. I guess we enclosed about 50 or 60 acres; it may have been over. We enclosed it with a good, substantial fence of posts and planks. He hired a fellow to keep the fence up for near two months; when he quit keeping the fence up people tore the planks off. I suppose there is some of it there yet. It stood along the road there as an enclosure for a year or better.

Cross-examined by JOHN M. HARRELL, for James O. Ducker:

3 Q. What time in 1874 was it you ran than fence?

A. The last days of December and first of January.

185 4 Q. When you were building that fence back of Jimmy's, on the side of the hill, did you not fence between some buildings started on the left and north to the Benton road, between Ducker's office and the Benton road?

A. Yes; but there was no fence then. He had started to clear and had some lumber there, and we went and fenced right up on the mountain, and of course he was inside, and we fenced him in.

5 Q. Was he arrested and imprisoned?

A. I do not know what they did with him. I never saw him any place, only in the court-house, where he was the next week at the trial.

6 Q. What became of the lumber he hauled there?

A. I cannot say. The hands that worked with me never touched it.

7 Q. When you commenced work there did not he have his posts in the ground?

A. No, sir.

8 Q. Do you know whether he pulled down that fence in order to get his wagons through when they came with lumber?

A. I know that he had it torn down and the planks knocked off and drove through.

Questions by W. P. WALSH:

9 Q. Do you recollect when you were building this fence for Major Gaines in 1874, when you constructed it along the line where Towle and those colored people lived, it was not Sunday?

A. No, sir; it was not.

186 10 Q. Did you not work on Sunday?

A. That fence was built along there in the week.

11 Q. Did you not run the fence right through Becker, Goodman, Houseman, and Towle's yards?

A. No, sir; their houses were left outside. There was no building left on that side of the fence.

12 Q. Did you leave their well on the other side of the fence?

A. If there was any well there it was not finished; it must have been just a well started.

13 Q. Did not you and Mr. Ducker race in building that fence to see who could get through first?

A. No, sir.

14 Q. His fence was inside of yours six feet?

A. I do not know the distance. He had no fence there when we built ours.

15 Q. Did he have any fence there at all?

A. No, sir; he was just fixing to build a fence. He was getting his poles, and his hands were starting to dig the holes. They had their picks and spades there. They began to dig holes for the posts and we got by there and they stopped.

16 Q. How many holes did they dig?

A. I do not know. The place that they started to enclose in was not more than twice as big as this house.

And further the witness saith not.

187 FEBRUARY 12TH, 1878.

In the Claim of WM. H. and MARIA GAINES, No. 784—Continued.

NATHAN H. CLOYES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Nathan H. Cloyes; age, 50, and reside here.

Q. Look at that paper and see if it was given by you.

A. Yes, sir; Mr. Curl wrote it and I signed it. I sold the improvements stated there.

Q. It says all improvements, including the residence. Where is that?

A. Where the street starts out below the grave-yard, on the west side of the Malvern road. All the improvements stated are upon the ground. I made 2,000 brick there; had it all enclosed.

Q. Do you—who built the fence that enclosed that lot right north of the church or adjoining the Methodist church?

A. I put the lumber there and had it built for Major Gaines.

Q. Before or since the decree?

A. Before; right after I built the church.

Q. Do you know anything about the fences that Major Gaines had around the Sabin field and whether they were kept up until after the decree?

A. Yes, sir; parties kept pulling it down all the time.

Q. Did they keep repairing it?

188 A. Yes, sir; for two years. I hauled plank several times for Major Gaines to put it up. I cultivated it for two or three years myself.

Q. You were here in 1865?

A. Yes, sir.

Q. State whether you know anything about a fence built on what is commonly known as the Sumpter possession.

A. There was a fence built there. It was understood that she fenced it. The stable was not there then.

Q. Who occupies it now?

A. It is right in front of the Sumpter house.

Q. All that property in front of the Sumpter house?

A. Yes, sir; where Hobson's office is, and runs back to the Sumpter house.

Q. Do you know what became of that fence?

A. A portion of it was torn down. It was broken down there when they were building the stable. They kept the fence up there as well as they could. It was a general camping place. In 1870 a new fence was put up there entirely.

Q. Who put that there?

A. Billy Sumpter was bossing it; had some hands to do it.

Q. And they were armed with shotguns?

A. Yes, sir; the parties working there were armed. They built the fence clear down to Sammons' property, right where the Methodist church stands.

189 Q. On the front or back?

A. All on the front. They went down the front until they came to what is called the Smokey road and went up the hill there. Dr. Hobson afterwards built a dwelling-house right upon the edge of the fence.

Cross-examination by Mr. HARRELL:

Q. When speaking of the fence, which you say you repaired and cultivated the ground within it, to which did you refer?

A. I refer to the old field fences. It did enclose some wood lands. It did not go on the mountain there.

By Mr. WALSH:

Q. You spoke of a stable in your testimony. To what do you refer?

A. Chidester stable.

Q. Do you state as a fact that this fence referred to in your testimony was torn down to construct that stable?

A. I didn't pull it down.

Q. Do you know whether there was a fence there when that stable was constructed, to your own knowledge?

A. I don't know as there was a fence there right at the time of the building of the stable, but just before the building.

Q. How long before?

A. Three months.

Q. You spoke of a fence being built there in 1865. What time?

190 A. During the spring of 1865.

Q. What sort of a fence?

A. Plank fence.

Q. Any part of it rail?

A. Some along in front.

Q. How far back west from the street was the enclosure from the present street?

A. It rather come out in the street.

Q. Then how far east from the mountain?

A. I could not tell you; there was a fence behind Belding's store, and that fence went back to the old Sumpter garden and the quarter-section line.

Q. Was Belding's store standing there then?

A. Yes, sir.

Q. You said something about Dr. Hobson building a residence.

A. Yes, sir.

Q. Whereabouts?

A. Built immediately west of the South End drug store; maybe a little north.

Q. Do you know who lives there now?

A. No, sir; I do not.

Q. Was it within the Sumpter enclosure?

A. Yes, sir; inside of it.

Q. When was it built?

A. I do not recollect exactly the day; I know I delivered some lumber there and some brick.

Q. Is it not a fact that Sumpter built a house there in 1871 and rented it to Dr. Hobson, and he put an addition there?

191 A. I don't know but what there was a little building there called Dr. Hobson's; he was the only one occupying it as a residence that I know of.

Q. Do you know whether Belding had a storehouse there in 1865 or not, at the time you say this fence was built?

A. There was an old storehouse there.

Q. Do you know how long the fence remained there that Mrs. Gaines built?

A. No, sir; it was put up and torn down frequently.

Q. Did you live here regularly in 1865?

A. No, sir; I lived here six months in 1864.

Q. You said something of men being armed. Where was Sumpter? Where was the gun?

A. Sitting up against the fence.

Q. Do you know what he was doing with it?

A. No more than that he had men with him.

By Com. COBURN:

Q. How many did you see with arms?

A. But one.

Q. Who had that?

A. William Sumpter.

Q. Was that gun used in the frightening of any one?

A. He did not make any threats at all; he set the gun down by the posts and told them to go ahead and put up the fence.

Q. Some one was with him?

A. The men were already there; he had three or four hands to work on the fence; they commenced in the night and it was finished that morning.

192 Q. Any altercation at all between him and any one?

A. No, sir.

Q. Any opposition to the building of it?

A. No, sir; I did not see any opposition at that time.

Q. Mr. Sumpter set the gun down before the hands went to work?

A. Some of them were working; nobody interfered with him.

Q. How long did he stay there with the gun?

A. He seemed to be protecting the hands. He was not there more than two hours and a half getting the fence completed. He was there all the time. The last time I saw him he was going below, down towards the Methodist church, putting up the fence.

Q. You said the fence was commenced at night. How do you know that?

A. I was in town, at Ellsworth, the evening before, and the new posts were not set then, but the next morning they were there and nailing the fence to them.

Q. Did you see anybody at work on it that night?

A. No, sir.

By Mr. RICE:

Q. Where did that fence commence on the north?

A. Adjoining Chidester's stable.

Q. Southwest corner of the stable?

A. Yes, sir.

193 Q. It did not enclose it?

A. No, sir.

By Mr. WALSH:

Q. You acted as agent of Major Gaines for several years?

A. Yes, sir; nearly two years; use to rent some houses and collect the rents.

Q. What was Major Gaines' revenue a year—how many thousand dollars?

A. I do not know.

Q. How much did you collect as agent for a year?

A. I could not tell.

Q. Ten thousand a year?

A. I don't think it was.

SAMUEL H STITT sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Samuel H. Stitt; age, 34, and reside at Hot Springs.

Q. Are you acquainted with William H. and Maria Gaines?

A. Yes, sir.

Q. State when you came to Hot Springs to reside.

A. In 1870.

Q. What business did you follow at that time?

A. Hotel-keeping. I opened the Hot Springs hotel.

Q. State whether you know anything about Sumpter and others fencing in the ground in front of that hotel in 1870 and how they done it.

194 A. I remember that a fence was put along in front or a little below the Hot Springs hotel.

Q. Who was engaged in it?

A. I remember that there was considerable talk at the manner the fence was put up; some excitement there, and parties were standing around armed.

Q. What were they armed with?

A. Shotguns.

Q. Who had them, according to your best recollection?

A. As far as I can remember, they were Mr. Sumpter, his brother, Mr. Daniels, William and George Sumpter. I don't know that they were all armed, but I remember there were two or three shotguns on the ground, and considerable comment was made of it by the visitors of the hotel, who had collected on the porch. Major Gaines started to go over, and I rather think his family tried to prevent his going; but he went over, and there was some little apprehension about his safety.

Q. Did they remain armed until the workmen built the fence?

A. As far as I can remember, they did.

Q. Was there any fence there previous to that time, in 1870?

A. I can remember part of an old fence down at the southeast corner of that lot.

Q. But no enclosure?

195 A. A remnant of a fence there—a skeleton of a fence.

Cross-examination by Mr. HARRELL:

Q. Who built the Hot Springs hotel?

A. Mrs. Gaines and Mr. Gaines. I furnished the house and run it on a partnership.

Q. What did it cost?

A. I do not remember exactly. When we opened it the hotel was not completed; considerable repairs were put on afterwards; it was plastered afterwards and an addition put on.

Q. Do you know whether there was any money borrowed from a lawyer in Memphis to build it?

A. I don't think there was.

By Mr. RICE, as attorney for Hobson:

Q. Was not that vacant ground from Chidester's stable down to where the stores are at present?

A. As far as I can recollect, it was open along there.

Q. Including Hobson's office, was not that all vacant in 1870?

A. As far as I can recollect, it was.

Q. Enclosed in any other way except the one just described?

A. I don't know as it was.

By Mr. CURL:

Q. Do you remember who the parties were that had arms?

A. I cannot remember exactly who they were.

196 Q. Were there many of them?

A. No.

Q. Was anybody opposing the construction of the fence?

A. Not that I know of.

Q. Do you know when that fence was built?

A. I do not remember the time of day; it seems to me when I saw this scene it was in the morning.

Q. Were you here in 1874?

A. Not all of the year.

Q. Do you know anything of Mr. Sumpter's building a fence there in 1874?

A. No, sir; I was in Washington in 1874.
Q. What is the relation existing between you and Major Gaines?
A. Friendly.
Q. Are you not the son-in-law of Mr. Gaines?
A. I am.

HIRAM IRWIN sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Hiram Irwin; age, 63, and reside at Hot Springs.
Q. Do you know whether there was a fence in 1865 built on the ground opposite the Hot Springs hotel; and, if so, who built it?
A. No, sir; I do not recollect. I recollect seeing a fence there distinctly after the war, but I do not know who built it.

197 Mr. Benjamin offers in evidence the pleadings in the case of Gaines and the Belding heirs against Wm. and Elizabeth Sumpter, filed January, 1866; also a writ of possession for the property commonly known here as the Sumpter property, and the return of the sheriff putting Gaines in possession under *mean* process.

WILLIAM H. GAINES sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.
A. Wm. H. Gaines; age, 80, and reside at Hot Springs.
Q. State whether you ever made a lease in writing with James Sumpter or not.
A. I did.
Q. State what has become of that lease.
A. I have searched everywhere for it.
Q. Have you any copies?
A. There was in a good many cases.
Q. Look at that and see if it is a copy.
A. I presume it is; they were all copied by a man by the name of Knight at Little Rock correctly, and some filed in court and proved.
Q. You are satisfied this is a correct copy?
A. Yes, sir; have had it read to me several times.

Copy of lease offered in evidence and marked Exhibit No. —.

Q. Was the store and three rooms that were reserved in this lease a part of the possession that you recovered by the writ of
198 possession and ejectment suit from Sumpter?
A. Yes, sir; leased them on the same day.
Q. To whom?
A. Kempner.
Q. Look at that and see if it is the lease you made.
A. It has been read to me. I know it is the lease.

Articles of agreement between Wm. H. Gaines and Kempner offered in evidence and marked Exhibit No. —.

Q. State what you know of this property being fenced up after the war by Mrs. Gaines and what occurred afterwards.

A. I got home on the 18th of May, 1865. That ground was fenced up partly with plank and rails in front of the Sumpter house. The Sumpter family had left here in 1864. My considering it her possession, and wanting to make a garden, had it fenced along there and it remained so for some time. After the Sumpter family came back they wanted to build in front. I objected to them doing it; they built back, then. How long the fence remained am not able to say, perhaps a year or two. Sumpter had taken possession; he tore down the fence passing through and used some of the rails elsewhere. My lawyer advised me to bring suit, which I did; they put
— the suits a long time and Judge Watkins, my lawyer, made
199 a proposition to Sumpter's lawyer to just pass them over without trying them, and I agreed to it. I think several courts were just passed in that way by an agreement of counsel. When the hotel was built the ground there became more valuable in 1870 or 1871, and one morning I found that Sumpters had been at work and put a fence along there. My people insisted that I should not go over there. I told them I should certainly go, as I had no fear. I went over there and had a few words with them and told them they were acting contrary to law and order and to stop fencing up the ground, and they said they would do it. They continued to fence it up and took in a good deal of ground in back, run it along down the street on the ground that I had been put in possession of by the sheriff in the suits brought after the courts gave me judgment against parties. They fenced up a great deal of ground they never had in possession and run a fence down off the mountain, fencing in my improvements. I paid no attention to it and just let them go on.

Q. Any of them armed?

A. I think they were all armed. I remonstrated against their acting in violation of law and order and that I was legally in possession of it.

By Mr. CURL:

Q. This lease that you showed here was executed at the time it bears date?

200 A. Yes, sir.

Q. How long after you got judgment against Sumpter?

A. Pretty soon afterwards.

Q. Was the suit based upon the certificate of entry of the Belding heirs?

A. Yes, sir.

Q. State if there was not an agreement between you and Mr. Sumpter before the trial of that case in February, 1856, by which Mr. Sumpter was not to answer in that suit and let judgment *nil dicit* go against him.

A. I think not.

Q. Was there not an agreement between you and he that he was to take these lands and remain in possession until the question of the right to the property was settled, or rather the right of the Belding heirs was determined, and in the event the Belding heirs did not obtain the right of entry he was to remain in possession?

A. No, sir; I got judgment against Sumpter for back rent. I did not want his money. I was only fighting for the land, and told him that he could remain there at a nominal price; told him he could give me these three houses for my own use, and that I would lease him all the balance and his bath-house. He told me
201 he would agree to it when he came home, but it was after the judgment. The judgments were all got at the same court, and the compromise was made in the presence of Sharp and Stedham, who drew the lease.

Q. Were you put in actual possession by the sheriff?

A. Yes, sir; did not put out Mr. Sumpter because he agreed to the compromise and signed the lease the same day. I leased to Kempner three rooms at $12 a month.

Q. Was this arrangement made at the time or previous to the time that the sheriff came with the writ of execution?

A. Yes, sir; he returned the execution satisfied.

Q. Did you build any house upon that land at that time?

A. No, sir.

Q. What title had you to the ground?

A. An occupant's title under the last act of Congress.

Q. At the time you say you made this lease, was it the time you brought the suit?

A. Yes, sir.

Q. What was your evidence of title at that time?

A. The suit shows that. The evidence of title was the certificate of entry and the purchase-money, and that was fully sustained by the courts and confirmed by the Supreme Court of the United States.

202 Q. Didn't you get that certificate of entry by representing to the departments at Washington that you simply wanted to get it to give you a standing in court?

A. I did not; my attorney may have done so.

By Mr. MURPHY:

Q. Did you not apply to the land office at Washington, Arkansas, first to enter this land—this quarter section?

A. I did not; Mrs. Belding had, long before I knew her.

Q. Did you afterwards apply, either in person or by attorney, at the land office at Washington, Arkansas, to get a certificate upon which you sued Sumpter?

A. No, sir; I applied to the Secretary of the Interior to refer the claim of the Belding heirs as filed there in the office back for re proof, all of which is here before the commission.

Q. Do you not know that your certificate was issued or ordered to be issued upon the representation made by yourself or your counsel

to the department that you merely wanted — to give you a standing in court, and not with the expectation of getting a patent upon it?

A. I do not know that there was any such thing.

Q. Was that your understanding?

A. I know I would never have any such thing.

203 Q. You don't know there was any such representation made to any of the departments to that effect or not?

A. I think it is possible my attorney, A. H. Mills, may have made application; I do not know it.

Q. Which one of the parties had the gun when they were fencing?

A. I would not be positive as to which one; I was too blind.

Q. Can you state that the fence you understood your wife to build enclosed that ground completely?

A. Yes, sir; the bulk of it.

Q. It made an enclosure around part of it?

A. Yes, sir; it was so when I got home the 18th of May.

Q. Was it the understanding between you and James Sumpter prior to or at the time of the execution of that lease that if that arrangement was made he should be left to remain in possession at a nominal rent until the question as to whether the Belding heirs would get a title should be settled; and if not settled favorably to them, was it not the understanding that then your rights as nominal landlord should cease and he should remain in possession without any reference to you or your rights?

A. Had no bargain of that sort.

204 Q. Was that the understanding between you?

A. I frequently said I should not claim anything; there was no particular understanding.

Q. Did you, in this city, or have you not in this place, frequently said since the war to John and William Sumpter that you made no claim to that land unless your title, or the title of the Belding heirs, should be sustained?

A. I do not think I had had any special contract of any sort.

Q. Have you made statements to them to that effect?

A. I claim the land under the laws of the country, and am entitled to it now. I made no claim to anything after the court decided against me. I disclaimed owning anything or having a transaction with anybody, buying or selling, until Congress passed the land law, which, I think, gives me a perfect right to the property. I do not say I am entitled to it. If I am entitled to it under the law of the country of possession and occupancy, I am the largest occupant. I have spent four times as much money on the property as anybody else, built more houses, and brought the property up into notice.

Q. Have you not in this city since the war talked to Wm.

205 and John Sumpter, the adverse petitioners, frequently about this matter, and have you not told them in these conversations that you had no claims against them whatever in reference to the land unless your pre-emption certificates should be sustained?

A. I am claiming——

Q. I am not asking you how you are claiming. Have you made such statements as those?

A. I think likely I have made such statements I made no such bargains with any one.

By Mr. RICE, attorney for Mr. Hobson:

Q. Since 1867 has there been any improvements on that piece of ground fronting the Hot Springs hotel, that was enclosed by your wife, except the fence that you have described that the Sumpters put up?

A. I think the fence that my wife put up there covered that very ground.

Q. In 1867, after that fence was away?

A. Is that the date of the lease to Chidester?

Q. The lease to Chidester? I am speaking of the ground south of Chidester's stable, including Dr. Hobson's office, and that vacant ground below there. Was there any buildings on that ground, any improvement except the fence that your wife built and was taken away, and since that, except the fence built in 1870 by the Sumpters?

206 —. Not by the Sumpters. There was a house built there adjoining the stable and Dr. Hobson's office.

Q. When were they built?

A. I cannot tell exactly.

Q. Before they were built was not that vacant ground, with the exception of the fence, put up in 1870?

A. Yes, sir.

Q. Had it not been vacant all the time after the time the fence was put up by your wife up to the time Dr. Hobson's office was built?

A. Yes, sir.

Q. And vacant at the time Hobson's office was built?

A. I think so.

By Mr. RICE, as attorney for Chidester:

Q. Has there been any improvements since the war in the way of buildings upon the lot of ground where the El Paso stable is now standing up to the time it was built?

A. No, sir; no improvements there when I leased the ground from Mrs. Chidester; might have been some patches of fence.

By Mr. BENJAMIN:

Q. Here is a contract between you and Walingford. Is that your signature?

A. Yes, sir.

Q. You had such a contract and it was reduced to writing?

207 A. Yes, sir; and built a house where Louis Bertsch now holds.

Q. State whether you had one with Gillis to build a stable.

A. Yes, sir.

Q. Where is that stable?

A. South of the house. Put all those buildings up and the dwelling-house at the same time, and that is where Toole and others are. Most of them are my houses, and when the receiver came they were turned over to him. They are the houses that I built.

Q. State whether you kept them up or tried to keep them up until after this decree.

A. Yes, sir; I tried all the time to keep them up.

Q. And were torn down frequently and repaired?

A. Yes, sir.

By Mr. HORRALL:

Q. Here is what purports to be a lease of a lot of ground by you to Gillis. Do you know whether or not that is the original lease?

A. I do not. I think there were two or three contracts with Gillis.

By Mr. BENJAMIN:

Q. Contract to build a stable?

A. I furnished all the lumber; had such a contract.

By Mr. HORRALL:

208 Q. Does this profess to be a lease between Wm. Gaines and Gillis for a parcel of ground situated on the east side (reading from lease)?

A. That is the ground exactly; it is the Gillis stable and dwelling-house which was cut into two apartments to rent, and the stable makes three.

Q. By what right did you assume to lease this ground—a right of yourself or as agent of the Belding heirs?

A. Myself; some of them were in the name of the Belding heirs and some in my individual name.

Q. Did you lease it as your own ground?

A. By representing the Belding heirs—being one of those heirs—and also representing Wm. Gaines individually. Where I have bought and built I have considered it my own property, not the property of the Belding heirs. These heirs will get from me all that they would be entitled to where I have got possession.

ALPHONSO CURL sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. Alphonso Curl; age, 37, and reside at Hot Springs.

Q. State whether you were formerly an agent of Mr. Gaines.

A. I was the agent of Major Gaines and collected all his
209 rents in 1873 and some little time before that.

Q. Look at that lease and see if it was drawn up by you or not.

A. I wrote that lease.

HIRAM IRWIN recalled:

Q. Are you acquainted with Major Gaines and wife?
A. Yes, sir.
Q. State whether you were employed or assisted in any way in building a fence at any time for Major Gaines; and, if so, when and where.
A. I think it was about four years ago I fenced up a piece of land near where the depot now is. He came to me one day and made a proposition that we build a partition fence between us, he to furnish a part of the material and I was to do the work.
Q. Where was it?
A. It ran pretty much north and south on what was his line; it was built of cedar posts and of good planks; it ran upon the mountain, going north some 30 or 40 rods; then Major Gaines went with his hands, continued the fence up the mountain, and, I suppose, clear around. It enclosed about four acres near the depot.

By Mr. WALSH:

Q. When was this partition fence constructed?
A. About four years ago.
210 By Mr. RICE: From the point where you commenced that fence to run north, state whether there was a fence running south.
A. Yes, sir.
Q. How far this side of the depot was that fence?
A. Right near where Capt. Roe's stable now is, about forty steps this side of the depot.

By Mr. HARRALL:

Q. Do you recollect about what time it was that Major Gaines built that fence? Where did he commence it—at his house?
A. This new fence commenced, I think, at his horse lot—he had a horse lot around his stable—and went to the Benton road; then it turned and went north and then joined me.

By Com. COBURN:

Q. Was there any cleared land northeast of the horse lot?
A. I don't think there was in the piece I am speaking of now—the mountain side of the Benton road. It was just regular woods.
Q. Did you see anybody at the time Mr. Gaines was running his fence from the horse lot east attempting to put up improvements on the north side of the line?
A. I didn't see them at work, but saw plank and lumber where they said Mr. Ducker was putting up a building.
Q. Did you see anybody at work on that improvement at any time?
A. No, sir.
211 —. How much lumber did you see on the ground?
A. Really I do not know; some four of five loads.

GEORGE M. FRENCH sworn and examined.

Examined by Mr. BENJAMIN:

Q. State your name, age, and residence.

A. George M. French; age, 42, and reside at Hot Springs.

Q. State whether you made a survey of the Hot Springs reservation during 1875 or not.

A. I did.

Q. State the condition at that time of Major Gaines' fences and fields east of Hot Springs creek.

A. There was an old field southeast of the cemetery there and a fence along by the Malvern road, very near the township line, little north of it, but there was a fence along there that was intended to have been put upon the line and was out perhaps 1,600 feet, and was along in front of some houses built by the colored people on the hill; then there was a fence bearing to the left, running north, continuing on down, which would now be just east of the enclosure of Richard Irwin, north or west of the depot building, and joined a fence coming down on the south side of the Benton road. There was a fence on both sides of the Benton road.

Q. What fence was there on the north side of the Benton road?

212 A. There was an enclosure fence on the north side and an enclosure of a plank fence that took in the lot east of Major Nelson's place—seemed to be a horse lot—and further on was another board fence that ran up north, up the hill, as far, I should think, as the claim of Mrs. Murphy, on the side of the mountain; then followed down and included the house occupied by Mr. Davis, and came down and to the fence north of Major Gaines' residence, and joined on there.

Q. You were here when the receiver took possession?

A. Yes, sir.

Q. Do you know the condition of the fence about that time?

A. There had been an avenue opened up called the Gaines avenue; run down from the Benton road, south of the cemetery, to the depot. I mean the Malvern road.

By Mr. WALSH:

Q. What buildings were in the enclosure at that time?

A. A good many.

Q. Did you trace the lines?

A. Yes, sir; I traced all the enclosures and made all the lines on the map to correspond with them.

Q. What kind of a fence was on the top of the mountain?

A. Posts and rail on the mountain. The fence did not go
213 on the top of the mountain. There is a line on the map showing that fence.

Q. You are positive there was a fence alongside of the mountain?

A. You remember where the stable burned down with the mules in it. It was right north of that. It started right opposite that and went right up the hill.

Q. Do you know whose fence that was?
A. I suppose it was Major Gaines'.
Q. Was there an enclosure east of that?
A. There was an enclosure on three sides, but none on the north side; east going out to the quarter-section line—going out to McGovern's.

By Com. COBURN:

Q. What was the condition of the ground east?
A. It was timber ground except around the house and horse lot.
Q. What was the condition of the ground east of Gaines avenue?
A. It had all been cleared, as now, as far as the depot building. On the left-hand side of the Benton road it was natural timber land until you got to Irish Jimmie; then there is a cultivated field there a little place where Roe's stable is now that had been cleared off.

FEBRUARY 12TH, 1878.

Offered in evidence contract between Wm. H. Gaines and John J. Gillis, dated Feb'y 13, 1873, marked Exhibit A.

214 Also offers in evidence contract in regard to a building between Gaines and Foster and Walingford, dated 1st of January, 1871, marked Exhib- B.

Also a lease referring to the same parties in reference to building what is known as the Bertsch house, marked Exhibit C.

Also lease to Louis Bertsch from Wm. H. Gaines for the same property, marked Exhibit D.

Also contract of lease between Wm. H. Gaines and S. J. Bumton, marked Exhibit E.

Also bill of S. Cloyes for certain improvements, dated Aug. 1st, 1873, marked Exhibit F.

Know all men by these presents that I, William H. Gaines, of the county of Garland and State of Arkansas, do hereby appoint and constitute Albert B. Gaines, of the city of Hot Springs, county of Garland and State of Arkansas, my agent and attorney-in-fact, for me and in my name to demand, obtain, and receive from the Hot Springs Commission any certificate, award, or any other paper or evidences of indebtedness that may be issued to me and in my name or for my benefit granting me pay for any buildings or improvements, condemned, situated on any of my claims, and to receipt to said commission in my name for any and all such certificates; also to receive in my name and stead and receipt for

215 same any certificate, award, or any other paper given by said commissioners to me giving me the right to purchase from the United States Government all lots or parcels of land described in my petition, number —, and to do any and all acts for me and in my name necessary to be done in order to secure a title from the United States Government to said premises to the same effect as if personally present. My said attorney is hereby empowered to perform all such matter as he may deem necessary for the purpose of

carry- out the objects herein mentioned, and I hereby ratify and confirm all that he may do in the premises.

Witness my hand and seal this 11th day of December, 1879,

WM. H. GAINES. [SEAL.]

STATE OF ARKANSAS, }
County of Garland, } ss:

Be it remembered that on this day personally appeared before the undersigned, a notary public within and for the county aforesaid, Wm. H. Gaines, to me well known as the person signing the foregoing power of attorney, and acknowledged that he executed the same for the uses and purposes therein mentioned and set forth.

Witness my hand and seal as such notary public on this 11th day of December, A. D. 1879.

JAS. G. ALLEN,
Notary Public.

[Seal Jas. G. Allen, Notary Public, Garland Co., Ark.]

216 This article, descriptive of the improvements of Abigail Dupass, late Abigail Sabin, at Hot Springs, in the county of Hot Springs and State of Arkansas, lately sold to Wm. H. Gaines and to be delivered to said Gaines on the 1st day of April, 1852, represents that the claim and improvements sold as aforesaid are as follows, to wit: Lying on the east side of Hot Spring creek, immediately at the foot of the Hot Spring mountains, including two hot springs on the spur of the mountain; also a number of cabins at the foot of the mountain, with stables, corn-cribs, a garden, and other lots adjoining the stable; also a field and other cleared land near said buildings; also a large field, or rather a part of said field, near by the improvements aforesaid; all of which said improvements as aforesaid extend over and cover some twenty acres, more or less, consisting of all the improvements on the east side of said Hot Spring creek, lying on the southwest fourth of section thirty-three, township two south, range nineteen west, except a small lot and dwelling-house known as Richard Puckett's and one other small cabin near the lower Hot Springs and a small mill-house and a cabin known as White's mill. The sale of the aforesaid improvements to the said Gaines is upon such condition and terms
217 as are especially set forth in the conveyance of the said Dupass to the said Gaines, heretofore made in writing, and this article is intended as a more full description of the premises aforesaid; and the said Abigail Dupass does hereby deliver unto Lydia Belding, for said Wm. H. Gaines, the entire possession of the premises aforesaid, and does hereby acknowledge the payment of seven hundred dollars to her, the said Dupass, being in full for the improvements and premises conveyed as aforesaid, this 25th day of March, A. D. 1852.

A. DUPAS.

List of Real Property Assessed for Taxation in Hot Springs Co. for the Following Years.

Owners of land.	Part of sec.	No. of acres.	Section.	Town-ship.	Range.	Valuation.	Remarks.
Belding, Ludovicus	S. W.	160	33	2	19	70000	Assessor's book for 1862.
Belding heirs	S. W.	160	33	2	19	20000	" " " 1866.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1866.
Belding heirs	S. W.	160	33	2	19	20000	Assessor's " " 1867.
Belding heirs	S. W.	160	33	2	19	20000	Collector's " " 1867.
Belding, L., heirs	S. W.	160	33	2	19	20000	Assessor's " " 1868.
Belding, L., heirs	S. W.	160	33	2	19	20000	Before reconstruction. Collector's book for 1868.
Belding heirs. Sam. Tate & Co	*S. W.	*160	*.63	.....	.....	1000100	Assessor's " " 1868.
Belding heirs	S. W.	160	33	2	19	{10000 70000}	After reconstruction. Injunction, 1868.
C't c't sustains injunction, collector credited same.							
Belding heirs	S. W.	160	33	2	19	{10000 10000}	Assessor's book for 1869.
Belding heirs	S. W.	160	33	2	19	10000	Collector's " " 1869.
Belding heirs	P't S. W.	160	33	2	19	15000	Assessor's " " 1870.
Belding heirs, 1870	S. W.	160	33	2	19	15000	Collector's " " 1870.
Equalized to $80000.							
Belding heirs	S. W.	160	33	2	19	10000 A	Collector's " " 1871.
Belding heirs	S. W.	160	33	2	19	80000	Collector's " " 1872.

* Erased in copy.

STATE OF ARKANSAS, }
County of Hot Spring. }

218 I, John W. Keith, clerk of the circuit court in and for said county, do hereby certify that the annexed and foregoing is a true and perfect copy and transcript of the assessment of the foregoing land as the same appears on the tax books now on file in my office for the years as set forth in said transcript; and I further certify that the tax books from the year 1852 to 1862 are not to be found in their office; that the same were lost during the war or burned with the court-house in 1873.

In testimony whereof I have hereto set my hand and [SEAL.] the seal of said court on this 12th day of February, A. D. 1878.

JOHN W. KEITH, *Clerk.*

Know all men by these presents that I, George Belding, in consideration of one dollar in hand paid and a written agreement bearing even date herewith to convey a certain portion set out in said written agreement that may be awarded to Wm. H. and Maria Gaines, do quitclaim, transfer, assign, set over, and release all my right, title, and interest of every description in and to the southwest quarter of section (33) thirty-three, township (2) two south, and range nineteen west, except that portion on the east side of Valley street and south of and adjoining the ground leased by R. B. Clyde from Wm. H. Gaines, and extending south to the section line 219 and east to Hot Springs creek, which property said George Belding has had in his possession for more than seven years, in the county of Garland and State of Arkansas, and which forms a part of what is commonly known as the Hot Springs reservation, to Wm. H. Gaines, his heirs and assigns; to have and to hold forever.

In witness whereof we have hereunto set our hands and seals, at Hot Springs, Arkansas, this 20th day of October, 1877.

GEORGE BELDING. [SEAL.]
AMANDA BELDING. [SEAL.]

COUNTY OF GARLAND, }
State of Arkansas. }

Be it remembered that George Belding, personally well known to me to be the party grantor signing the foregoing deed, — and acknowledged that he signed the same for the purposes therein stated; also at the same time and place appeared Amanda Belding, wife of said George Belding, and, in the absence of her said husband, acknowledged that she had signed her relinquishment of dower for the purpose therein stated and without any undue influence from her said husband, and I do so certify this 20th day of October, 1877, at Hot Springs, Arkansas.

GEO. W. BAXTER,
Notary Public.

220 [Seal Geo. W. Baxter, Notary Public, Garland Co., Ark.]

STATE OF ARKANSAS, *sct:*

In the Supreme Court.

Be it remembered that at a term of the supreme court of the State of Arkansas begun and held at the court-house, in the city of Little Rock, on the first Monday of January, A. D. 1855, amongst others were the following proceedings, to wit, on the 23d day of February, 1855, a day of said term:

PATRICK BURKE, Appellant,
vs.
WILLIAM H. GAINES *et al.*, Appellee-. } Appeal from Hot Springs Circuit Court.

This cause came on to be heard upon the transcript of the record of the circuit court of Hot Spring county and was argued by counsel. In consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be, and the same is hereby, in all things affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended and have execution therefor.

221 In testimony that the above is a true copy of the judgment of said supreme court rendered in the case therein stated I, Luke E. Barber, clerk of said supreme court, hereto set my hand — affix the seal of said court, at my office, in the city of Little Rock, this 7th day of February, A. D. 1878.

Seal of the Sureme Court of Arkansas

L. E. BARBER, *Clerk.*

222 "C." (4–207.) S. W. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 28, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of petition No. 160, before the Hot Springs Commission, testimony submitted in support of same, and the finding of the commission are true and literal exemplifications of the originals on file and on record in this office.

In testimony whereof I have hereunto subscribed my [SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

223 UNITED STATES OF AMERICA:

Hot Springs Commission.

HOT SPRINGS, ARKANSAS, *June 28th, A. D.* '77.

In the Matter of the Claim of MICHAEL W. TOALE and MARTHA ELIZA TOALE.

To the Hot Springs commissioners:

The petitioners, Michael W. Toale and Martha Eliza Toale, wife to the said Michael W. Toale, now residing at Hot Springs, Garland county, in the State of Arkansas, represent that they claim the following-described tract of land, a map of which is filed herewith and made a part hereof, situated in the Hot Springs reservation, which tract is bounded as follows, to wit:

On the north by the claim of Madison and Steelse, with a line running S. 83° W. 200 feet; on the west by the Sumpter claim, with a line running S. 7° E. 40 feet; on the south by an alley, with a line running N. 84° E. 200 feet; on the east by Valley Str.,
224 with a line running N. 7° W. 40 feet, to the place of commencement, lying and being in the S. W. ¼ of the S. W. ¼ of sec. 33, T. 2 S., R. 19 W.

That the following-described improvements are situated thereon, to wit, one plank dwelling-house, sixteen by thirty-two feet, containing two rooms sixteen feet square; also a frame building, now used as a justice's office by petitioner M. W. Toale, sixteen by thirty feet, containing two rooms. The last-named building was erected during the present year by petitioner M. W. Toale.

That they were erected by Michael W. Toale, petitioner (except the office building erected by petitioner in this year), in the month of September, in the year 1874; that they are of the value of five hundred dollars.

The petitioners further say they claim to be the owners of the said premises and entitled to purchase the same from the United States upon the following grounds, to wit: that petitioner M.
225 W. Toale, while engaged in the erection of Golden's planing

mill, in Hot Springs, bought lumber for, unaided by any one, and with his own hands and such assistance as he himself paid for, erected on the above-described piece or parcel of land the building and improvements above mentioned, said piece or parcel of land being vacant and unoccupied, and entered and occupied the same with his family as his residence, and has so continued to occupy from thence hitherto. Petitioner says that said lot was enclosed on the north by Wesley Steele's house, on the west by the fence of John J. Sumpter, and on the south by this house of J. B. Caffrey.

Petitioner further says that he declined to acknowledge any one as his landlord in said occupancy except the Government of the United States; that in the month of August, in the year 1875, and after the decision of the Court of Claims with regard to the
226 Hot Springs reservation, William H. Gaines caused petitioner and the wife and children of petitioner to be dispossessed and put out of said dwelling-house under color of a pre-emption claim which he pretended to include said piece or parcel of land above described; but that said family was by the neighbors put back into said dwelling-house; and petitioners were again dispossessed by said William H. Gaines at the November term of the Garland circuit court, 1875, and re-entered possession in May, 1876, since when they have continued in possession, given no bond to any one for retention thereof, have thenceforth peaceably continued in possession of the premises, and are still in possession of and residing on the same.

That petitioner M. W. Toale had the assistance of said petitioner Martha Eliza Toale, as his wife, in the erection and preservation of said improvements.

The petitioner files herewith copies of the documents here-
228 inbefore referred to and makes them a part hereof.

Wherefore they pray that the commissioners shall adjudge to them the right to purchase the said premises from the United States, and for other proper relief.

M. W. TOALE.
MARTHA TOALE.

(Here follows diagram marked p. 227.)

L. 362. No. 160. Hot Springs Commission. Petition of Michael W. Toale and Martha E. Toale. Lot 19, block 77. John M. Harrell, attorney. Witnesses: M. W. Toale, Martha E. Toale, Frank Horton, Madison & Steele, Brantly & Sons, Hyronemous, James Madison, Perry Ashby, John Sammons, Fred. Schicker, J. J. Lempter. Filed June 29, 1877. Record B. 2, p. 462. J. W. Anderson, cl'k H. S. Comm. Examined Febr'y 18, 1878. Adjudicated November 11th, 1879.

229 WILLIAM H. GAINES, Plaintiff,
vs.
M. W. TOALE, Defendant. } Writ of Poss'ion.

State of Arkansas to the sheriff of Garland county:

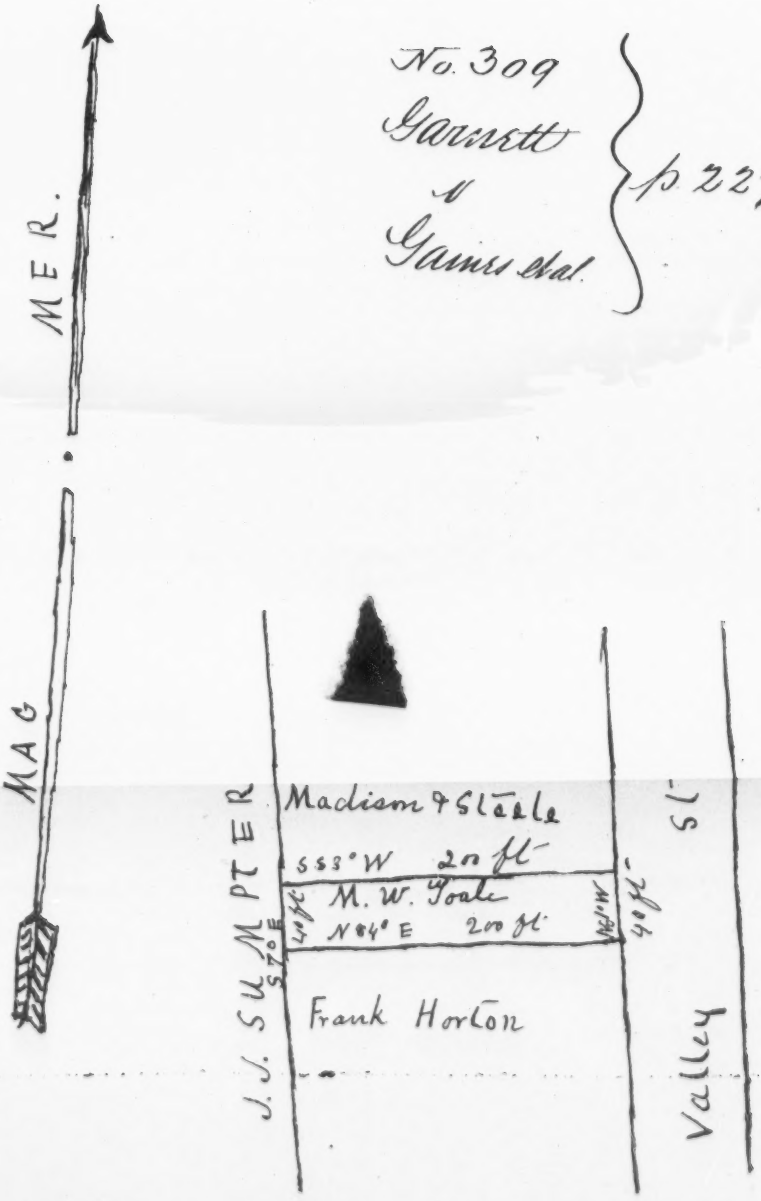
You are commanded (upon the plaintiff's giving bond according

6

M. W. Toale's

Claim

227



to law) that you cause the possession of the premises mentioned in the plaintiff's complaint, to wit, that certain tract or parcel of land situated at the southeast corner of Wesley Steele's building, on the west side of the street, in the town of Hot Springs, Garland county, Arkansas, near the south end of Hot Springs valley, run- thence west along the south line of Steel's house and lot to the Sumpter fence; thence south at right angles with the first line 40 feet; thence east parallel with the first line to the street; thence north along the street to the place of beginning, embracing building put up by M. W. Toale thereon, unto the possession of William H. Gaines, without delay, and make due return of this writ on the first day of the next term of the circuit court.

230 Witness my hand and seal of Garland circuit court this 12th day of August, 1875.

A. W. B. REED, *Clerk*,
[SEAL.] By Z. BELDIN, *D. C.*

Endorsed.

STATE OF ARKANSAS, }
County of Garland, } *ss:*

I have this 12th day of August, A. D. 1875, served the within writ of possession by delivering a copy of the same to M. W. Toale and by placing W. H. Gaines in possession of the within-described property.

Service	1 00
Mileage	10
Return	25
	$1 35

Paid.

JNO. J. SUMPTER, *Sheriff.*

Filed A igust 12th, 1875.

A. W. B. REED, *Clerk*,
Per Z. BELDIN, *D. C.*

Amended Return.

STATE OF ARKANSAS, }
County of Garland. }

231 I hereby certify that I executed the within writ on the 12th day of August, A. D. 1875, at Hot Springs, Garland county, Arkansas, by then and there delivering the property described in said writ to Wm. H. Gaines, and I ascertained by the oaths of J. C. Stanton and J. H. Lecroy, then and there sworn by me, the value of said premises; and the said Wm. H. Gaines on said day executed to me his bond in the sum of two hundred dollars, with R. G. Davies & W. T. Bell, residents of Hot Springs, Garland county and State aforesaid, as securities, as amended this — day of December, A. D. 1875.

JNO. J. SUMPTER, *Sheriff.*

Endorsed: Amended return of sheriff.

STATE OF ARKANSAS, }
County of Garland, } *ss:*

I, Ziba Beldin, clerk of the circuit court of Garland county,
232 Arkansas, do hereby certify that the annexed and foregoing is a true and correct copy of the writ of possession issued in the case of Wm. H. Gaines, plaintiff, *vs.* M. W. Toale, defendant, in said court, with the endorsements made by the sheriff and amendments thereto, as the same now appears on file in my office.

Seal of Circuit Court, Garland Co., Arkansas.

In witness whereof I have hereunto set my hand and the seal of said court on this 11th day of February, 1878.

ZIBA BELDIN, *Clerk.*

Exhibit A. 160. William H. Gaines *et al. vs.* Michael W. Toale. Copy of writ of possession. Given in testimony in claim of Michael W. Toale and Martha E. Toale before the Hot Springs Commission. A. H. Cragin, ch'r.

UNITED STATES HOT SPRINGS COMMISSION,
February 19th, 1878.

233 In the Matter of the Claim of MICHAEL W. TOALE and MARTHA ELIZA TOOLE.

To the Hot Springs commissioners:

Your petitioners ask leave to amend their petition heretofore filed on the 29th day of June, 1877, by striking out the following words, to wit: "On the site of a building erected by the petitioner in September, 1874, which petitioner removed to make way for said office building," on the page two, line six, of said original petition; and the words, "also built a fence around said piece or parcel of land—that is, completed said enclosure in October, 1875," on page two, line twenty-six; also the words, "have thenceforth peaceably continued," on page five, line eleven.

And that petitioners have leave further to amend by inserting in said original petition, on line five of page two, after the word
234 year, the following words: "By petitioner M. W. Toale," and on line twenty-six of page two, the words, "Says that said lot was enclosed on the north by the building of Wesley Steele, on the west by the fence of John J. Sumpter, and on the south by the house of J. B. Caffrey;" and on line thirty-two of page two, the word "August;" and on line thirty-three of page two, the figures "75;" and on line four of page five, the words, "petitioner and;" and on lines nine and ten and eleven of page five, the words, "Were again dispossessed by said William H. Gaines, at the November term, 1875, of the Garland circuit court, and re-entered into possession in May, 1876, since when they have continued."

JOHN M. HARRELL,
Attorney for Petitioner.

No. 160. Hot Springs Commission. Petition of Michael W. Toale and Martha E. Toale. Motion for leave to amend. Filed Feb'ry 19, 1878. J. W. Anderson, clerk H. S. Comm.

235 FEBRUARY 19TH, 1878.

In the Claim of MICHAEL W. TOALE & MARTHA E. TOALE. No. 160.

This claim is consolidated with that of William H. Gaines and Maria Gaines, No. 160.

MICHAEL W. TOOLE sworn & examined.

Examined by Mr. HARRELL:

Q. State your name, age, and occupation.

A. Michael W. Toole; age 44, and reside at Hot Springs.

Q. You are one of the petitioners in this case for the premises described in the plat?

A. Yes; have known the premises since October, 1874.

Q. State whether you made any improvements on this lot of ground, and when you made them.

236 A. In October, 1874, I made application to Mr. Curl to lease it—then acting as agent for Gaines—for 64 feet front of a vacant lot; part of it was taken up and I made application for the balance; went down and staked off 40 feet from the corner of Wesley Steele's house, leaving a fraction between not taken up; a week or two after commenced to excavate the hill for the purpose of building, leaving 32 feet for the front.

Q. Where was the hill?

A. West. I remained there and nothing more was said about the lease, and saw Mr. Curl no further or any other parties until August, 1875. Notice was then served upon me to give up the premises, at quarter past eleven, while eating my dinner. Mr. Sumpter, Mr. Gaines, Mr. Davis, and Albert Gaines had come to the premises demanding possession. I arose from the table to receive them and told them I certainly should not give them possession; they had the law in their own hands and might take it, but not with my con-

237 sent. Sumpter said he could not help it; he was acting as sheriff of the county. I then left to see the judge and ask for an injunction, and when I returned my things and children were out on the hillside. My wife did not know what to do. She was determined to remain there, and Mr. Sumpter approached her and took her by the arm to——

By Mr. BENJAMIN:

Q. Were you there when that occurred?

A. Not when he took hold of her. I told her inasmuch as everything was out she had better go with the children. There was great indignation manifested by the neighbors, and they desired to put us back again. That evening Mr. Gaines gave me permission to go into a small house that was occupied as a butcher shop. My wife was taken sick, and when she recovered my neighbors came and

moved them into my own house again, and remained until the circuit court was in session. He entered suit against me for this 40-
feet front. I was away, and when I came back found myself
238 in contempt to court, and was moved out again in obedience to the order of the court, and off the ground entirely. I left town, leaving instructions with my oldest son that as soon as they heard of the decision of the Court of Claims to move the family back in the house again. When Major Gaines returned from Washington after the decision and discovered there was no lease between us he came and asked me to enter into a lease. I told him that after the decision he had no right, and that I should certainly not enter into a lease with him, as it was the Government's property. Then he says, I will put you out. I remained until the November term of the court, and, owing to its instructions, moved out again. As soon as I heard the decision of the Supreme Court I repaired for home and found my family in the house again, and have lived quietly there since.

Q. Describe the building you erected.

239 A. It was 16 feet by 32 feet, two rooms—a frame house of one story.

Q. What enclosures were there, if any, about the building?

A. It was enclosed on the west side by what is known as the Sumpter fence, and on the north by Wesley Steele's house, and on the south by Mr. McCaffrey.

Q. The space enclosed, as described, you occupy as your residence?

A. Yes; as a home.

Q. And have held and occupied during these intervals when you were put out by force?

A. Yes.

Q. How did you use the vacant space?

A. For wood and lumber.

Q. Did you make any other improvements?

A. Put the office there that is now occupied as a justice court.

Q. Are you the justice of the peace of your own county?

A. Yes, sir.

Q. Describe that office.

A. It is 14 by 32 feet, and a one-story frame building.

240 Q. Has any one else occupied that place as a homestead?

A. No, sir.

Q. Has Major Gaines?

A. No, sir.

Q. Nor attempted to?

A. No, sir; Major Gaines stated that he had been paying taxes on this property for the last 20 years.

Q. You were in possession of the premises March 3d, 1877?

A. Yes, sir.

Q. And but for the ejectment you think you would have been in possession April 24th, 1876?

A. Yes, sir.

Q. It was your intention to make it your home?

A. Yes.

Q. And it is your home now?
A. Yes.
Q. What are the improvements on the place worth?
A. The dwelling-house cost $200, and the office $150.
Q. Who made those improvements?
241 A. I did with my own hands, helped by my son.
Q. Did Major Gaines furnish any of the material?
A. No, sir.

By Com. COBURN:

Q. What date did you build?
A. December, 1874.

By Mr. HARRALL:

Q. You commenced building when?
A. I commenced excavating some in November.

Cross-examination.

By Mr. BENJAMIN:

Q. You say you made application to Mr. Curl to lease it, and went down and measured it off?
A. Yes.
Q. Did you agree with Mr. Curl as to how much you were to pay?
A. There was no written agreement; it was well understood how he was renting ground.
Q. And he went and measured it off and you took possesion?
A. Yes.
Q. Did he tell you what they usually paid?
242 —. $10 a year per front foot.
Q. How much was measured off?
A. 40 feet, with the exception of a small fraction.
Q. And you afterwards refused to pay rent?
A. No, sir.
Q. Did they not demand rent of you?
A. Never did.
Q. State if they did not demand rent of you before they served any notice on you to quit.
A. No, sir.
Q. Said nothing to you about rent?
A. No, sir.
Q. You did not occupy that ground after you were put out until after the decree of April 24th, 1876?
A. Not from November, 1875, until after the 24th April, 1876.
Q. Then you went and took possession again?
A. Yes.
Q. When did you build the office that you have spoken of?
A. A year ago last January.
Q. Since the decree?
A. Yes.

243 By Mr. HARRELL:

Q. How long after the decision of the Court of Claims was it that you were put back—what month and year?

A. Was put back probably six or seven days after the 12th of August, 1875.

Q. The next time you were instructed to go out?

A. In November, 1875. The first time we were put back by the citizens on 15th of August.

By Mr. BENJAMIN:

Q. Day or night time?

A. I do not know; was away at the time.

By Mr. WALSH:

Q. When you went away you left your family here?

A. Yes.

Q. And you have been here continuously with your family except the time when you were away seeking employment?

A. Yes.

Q. And your wife is named Martha E. Toole, and she is one of the petitioners with you?

A. Yes, sir.

244 JAMES B. MCCAFFREY sworn & examined.

Examined by —— ——:

Q. State your name, age, & residence.

A. James B. McCaffrey; age, 50, and reside at Hot Springs.

Q. Do you know Michael W. Toole and his wife?

A. Yes; have known them some three years and a half. I have been here 4 years.

Q. Where did you reside when you first knew them?

A. The lower end of the valley, where I reside now.

Q. How far do you live from the improvements erected by the petitioners?

A. About 24 feet from my line they live.

Q. Did you see the erection of any building by the petitioners on the lot claimed by them?

A. I saw Captain Toole working on his building. I think he commenced it in November or December, 1874.

Q. Describe the building erected.

245 A. It was a small box house one story high. I suppose 15 by 25 feet; the building is just within one lot of me.

Q. Did he occupy the building after erecting it?

A. He did.

Q. Occupy it ever since?

A. With the exception of the times he has testified.

Q. You heard his testimony?

A. Yes; after he was put out, there was a school kept there for two or three months.

Q. Do you know who kept the school?

A. Miss Jenny ——.
Q. By his authority?
A. I do not know.
Q. Do you know how he was put back the first time?
A. I have no knowledge of it.
Q. Do you know when he got back the second time?
A. I do not know. I know he was living on the side of the hill on the back of his —, with some boards fixed up. I know he was there in cold weather. The first time he was put out was warm
246 weather. The sheriff, Mr. Sumpter, was the officer that officiated the first time. He was accompanied by some colored people. I have no recollection of any white men except Mr. Sumpter, Mr. Gaines, and Albert Gaines.
Q. Are Mr. and Mrs. Toole living in the house now?
A. Yes.
Q. Has he made any other improvements on the lots?
A. No, sir.
Q. Has he not built a new building and which is occupied as a justice office?
A. That is another lot, next to the saloon.
Q. That vacant piece of ground was bounded how?
A. By Wesley Steele's house on the north; on the west by John Sumpter's fence, and on the south by my line.
Q. Between you and this lot has been erected there since?
A. Mr. Morton erected a building there, which he now occupies.
247 Q. Do you know where Judge Toole got the lumber to build with?
A. I do not.

Cross-examination.

By Mr. BENJAMIN:

Q. Do you know whether he moved back in the day or night time?
A. My impression is that it was in the night; had no knowledge of it until the next day. When I saw him in the house again it was some time in the morning.

By Mr. HARRELL:

Q. He was not moved out in the night?
A. No, sir; I think after dinner.

LOUIS BERTSCH sworn and examined.

Examined by —— ——:

Q. State your name, age, and residence.
A. Louis Bertsch; age, 38, and reside at Hot Springs.
Q. Where was your residence in November, 1874?
A. At the Malvern crossing.
248 Q. State what you know about the erection of the improvements claimed by Toole.

A. He built a little shanty there.
Q. And has lived in it ever since?
A. One time Major Gaines put him out and he moved up the hill. Major Gaines did not want him on the place at all.
Q. What house did he move into on the hill?
A. A little shed there.
Q. How long did he stay there?
A. I could not tell that.
Q. What time was that?
A. A couple of years ago.
Q. What kind of weather?
A. I could not recollect.
Q. When did you move to your present residence?
A. A year ago.
Q. Is it far from Toole's?
A. 100 yards.
Q. Is Toole living there now with his family?
A. Yes.

249 By Mr. WALSH: What sort of a structure were they living in in November?
A. Looked like an old shed; have got a better place for my horse.

JONATHAN BRANTLEY sworn & examined.

Examined by —— ——:

Q. State your name, age, and residence.
A. Jonathan Brantley; age, 57, and reside in Hot Springs.
Q. Do you know Michael W. Toole and his wife, Martha Toole, the petitioners?
A. Yes, sir; I became acquainted with them in the spring of 1874.
Q. Where did you reside then?
A. On the corner of what is called Valley str. and what is sometimes called the lower Malvern crossing.
Q. Did you have any knowledge of the erection of the improvements on the lot by Mr. Toole?
250 A. I saw him build the house. I think it was in 1874 or 1875—one of those years.
Q. For what purpose did he build them?
A. He built it for a residence and went in when he got it done. He was renting house-room of me then.
Q. Has he occupied it ever since?
A. He was occupying it a little while?
Q. Do you recollect of seeing him ejected from the premises?
A. Yes.
Q. Who did it and when?
A. I don't recollect the precise time. The sheriff went there with Mr. Gaines, Albert, and some negroes, and threw him out of his house. It was in the daytime. I know that his wife was very sick at the time; don't know the cause of her sickness. Judge Toole

and the children were in the house at that time that Albert gave them permission to occupy. It had been used as a butcher shop.

251 Q. Do you know how they got back into their old residence?

A. All I know is that as soon as Mrs. Toole was able to move she was put in *their* again; was told that some citizens put her in. I was not *not* one of the citizens. He was put out a second time.

Q. State whether he is living there now and occupying it as a residence.

A. Yes.

Q. The second time he went out, where did his family go?

A. Built a little shanty of some planks in the rear, upon the hill.

Q. What kind of weather was it?

A. Part of the time it was pretty rough. I do not recollect the month.

Q. Do you know when he re-entered and took possession of the premises after that?

A. No; I know he did go back.

Q. And how long has he been in possession now?

252 A. Since somewhere about the time the court at Washington decided the question.

Q. Very soon after that?

A. Yes; I think so.

Q. What other improvements there?

A. I saw him build an office there.

Q. What official — does he occupy?

A. Magistrate here.

Q. And *is* office is there?

A. Yes.

In Rebuttal.

Mr. Benjamin offers in evidence certified copy of the writ of possession, dated August 12th, 1875, marked Exhibit A.

Robert G. Davies sworn & examined.

Examined by Mr. Benjamin:

Q. State your name, age, and residence.

A. Robert G. Davies; age, 26, and reside at Hot Springs.

Q. Do you know M. W. Toole?

A. Yes, sir.

Q. Have you acted as agent of Major Gaines?

253 A. I have.

Q. State whether you have ever demanded of Toole — for the ground in controversy.

A. Mr. Toole came to me and Mr. Curl, also, agent of Major Gaines, to rent a certain lot, I suppose the one he is claiming, and said how many feet he wanted, and I agreed to rent it to him at $10 per front foot, and I or Mr. Curl made out the lease. In the meantime he had some lumber he wanted to put on the premises. I think that was before we signed the lease, and afterwards Mr. Curl

or myself, I do not recollect which, asked him to sign the lease, and he would say, "Well, I will do it," but he did not, and afterwards kept on failing to pay any rent. I do not remember whether I made out an account and presented it to him or not, but it seems to me I demanded the rent of him. I always did before I brought any suit.

254 Q. Did you bring this suit?

A. Yes, sir; and I think, to the best of my recollection, that I demanded rent from Mr. Toole.

By Mr. HARRELL:

Q. What year was this that you were the agent of Major Gaines?

A. From October, 1874, until the 1st of July, 1876.

Q. Have you the books and accounts of your collection of rent as such agent for the year 1875?

A. I have.

Q. Have you estimated the rental income collected by you as such agent that year—1875?

A. Yes.

Q. State what it is.

A. Could not tell you what amount was collected that year, but I know the amount due.

Q. What was the amount charged?

A. The amount due was $20,800—that is, the grand amount. The rent of houses included the hotel; included everything. I will state that a good deal of the rent Major Gaines never

255 got; it was very difficult to collect his rents.

Q. That was for property on the reservation?

A. Yes.

By Com. COBURN:

Q. Did you ever make an estimate of the percentage of losses?

A. I never did. I think probably he got over two-thirds; not more than that.

By Mr. HARRELL:

Q. Did you bring this action of unlawful detainer against Toole?

A. Yes; Mr. Rector and myself together did.

Q. Was it not after the decision of the Court of Claims; and by what authority did you bring this suit against Toole after the decision?

A. I do not recollect, but it seems to me it was before that.

Q. Did you make out the lease for so much a year?

A. I made out a lease, but he did not sign it.

256 By Mr. MACNULTY:

Q. This property that you claimed rent for was the property of the United States Government?

A. I did not know whether it was or not.

Q. You do know now? The only reason you did not know it was that you did not know what the law was?

A. You asked me whether or not it was the Government property at that time. I will state that I did not know whether it was or not. Major Gaines was claiming it and a decision had been rendered against him and he had appealed from that decision to the Supreme Court, and that had not been decided.

Q. But Major Gaines did collect about $20,000 a year from persons in this valley for occupying the property of the United States, as a matter of fact, after the decision of the Court of Claims?

257 A. I believe he collected, I said, two-thirds of $20,000 for rent of property he had in possession and that he had rented out to other parties—houses and land altogether.

By Mr. BENJAMIN:

Q. Was not the greater part of that rent collected for houses?

A. There was about $7,000 collected on the Hot Springs hotel. I believe all that has been paid. I do not recollect the number of houses Major Gaines had besides that. I can estimate the amount.

Q. He had a great many?

A. Yes.

Q. There was no house on this place that Mr. Toole cleared?

A. No, sir.

No. 160. In the claim of Michael W. Toole and Martha E. Toole. Testimony of Michael W. Toole, James B. McCaffrey, Louis Bertsch, Jonathan Brantley, Robert G. Davies. Given before the Hot Springs Commission. A. H. Cragin, ch'r.

TUESDAY, *November* 11, '79.

258 In the Claim of MICHAEL W. TOALE and MARTHA E. TOALE. No. 160.

At this time comes the petitioners, Michael W. Toale and Martha E. Toale, and the commission having heard and considered the petition and the testimony, as also the testimony in claim No. 784, William H. Gaines and Maria Gaines, do say and find that the claim of the petitioners accrued prior to the twenty-fourth day of April, A. D. 1876, by reason of the use, occupation, and improvement of the premises described in the petition, and that the petitioners are the owners and entitled to the possession of the improvements made thereon.

And the commission, having had the premises surveyed, and having inspected and caused the same to be platted, numbered, and scheduled, and having appraised the same as provided by law, and being sufficiently advised of the premises, do further say and find that the petitioners are entitled to purchase from the United

259 States the following-described land in Hot Springs, to wit: Lot numbered (19) nineteen, in block numbered seventy-seven, for the sum of one hundred and eighty dollars, that being the appraised value thereof.

It is therefore ordered and adjudged that the said Michael W. Toale and Martha E. Toale are entitled to purchase said lot num-

bered nineteen, in block numbered seventy-seven, for said sum of one hundred and eighty dollars, and that a certificate be issued to them for the right to purchase the same, containing 1,650 feet.

260 UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 24th day of October, anno Domini one thousand eight hundred and eighty-seven, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

November 10th, 1887:

646. Decree.—Now, on this day, come the said plaintiffs, by their solicitor-, M. W. Benjamin and R. G. Davies, and also comes the said defendant, A. S. Garnett, by J. M. Harrell, Esq., his solicitor, and the special master having heretofore filed his report herein, and this cause now coming on for hearing, and the court having heard the argument of counsel and being now sufficiently advised as to the further decree to render herein, it is ordered, adjudged, and decreed that all the exceptions of the defendant to the master's report be, and the same are, overruled; to which judgment overruling said exceptions defendant then excepted; and thereupon the court finds and states the account between the plaintiffs and defendant as follows: To amount due said plaintiffs for rent, according to the terms of the lease, from the date of award to the date of filing of the bill in this case and interest, eight hundred and fourteen dollars and twenty-one cents; to amount due him since said date and until the filing of master's report, rental value of the property and interest annually, seven hundred and fourteen dollars and ninety cents; rent to date of decree, three hundred and fifteen dollars; amounting in the aggregate to the sum of one thousand eight
261 hundred and forty-four dollars and eleven cents; by amount due the defendant for taxes paid and interest, three hundred and sixty-six dollars and twenty-four cents; by amount of purchase-money paid by him to — Government for said lot and interest, ninety-six dollars and four cents; by present value of improvements, fourteen hundred and fifty dollars; which said sums amount in the aggregate to nineteen hundred and twelve dollars and twenty-eight cents; from which take eighteen hundred and forty-four dollars and eleven cents, as above, leaves the sum of sixty-eight dollars and seventeen cents, which the court finds to be the balance now due from the plaintiff- to defendant.

It is further ordered, adjudged, and decreed that the said defendant do have and recover from said plaintiffs said amount—sixty-eight dollars and seventeen cents—and all costs of this suit, and that he have execution therefor; and it is further ordered and decreed that the said plaintiffs do have and recover from said defendant the possession of said lot nineteen, in block 77, of the Hot Springs

reservation, and that a writ of possession issue; and serving a copy of this decree shall be the writ.

It is further ordered that N. W. Cox be allowed the sum of $100.00 for his services as special master herein; and the defendant prays an appeal to the supreme court, which is granted; and it is ordered, upon his executing and filing a bond, within the time and condition as prescribed by law, in the sum of twenty-seven hundred dollars, and cost bond for two hundred and fifty dollars, with good, approved security, the decree be superseded — said appeal.

On February 8th, 1888, as follows:

646. On this day comes the defendant, by John McClure, his attorney, and files his motion to set aside the decree in this cause; which motion is endorsed by the circuit judge as follows, to wit:

262 "LEAVENWORTH, *Feb. 4th*, 1888.

"Let no writ issue, or, if issued, let it be recalled without execution thereof and all proceedings to enforce decree be stayed till I attend at the ensuing April term.

"(Signed) DAVID J. BREWER,
"Circuit Judge."

Upon consideration whereof it is ordered that said order and direction of the circuit judge be accepted and received by the clerk and all persons as the order and direction of this court; which motion is as follows:

In the Circuit Court of the United States, Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE
vs.
A. S. GARNETT. } No. 646 and No. 645. Chancery.

Now comes A. S. Garnett, the defendant, against whom decrees were entered in the above-entitled causes for the lots in the bills described and $2,417.40 damages, and prays the court to set aside said decrees rendered on the 10th of February, 1887, for the following causes:

Defendant states he was not present at the rendition of said decrees, but was represented by S. W. Williams, Esq.; that he was advised by the said Williams that the cases had been decided against him and in favor of said Gaines; that he was informed by parties present in court, and especially by John M. Harrell, Esq., that he had ninety days' time within which to file a supersedeas bond; that he talked with other defendants against whom Gaines had obtained decrees at the same term of court and they all understood that they had ninety days within which to file supersedeas bonds; that he also talked with persons who were defendants and represented by John M. Harrell, Esq., and they were informed by
263 the said Harrell that the defendants in said suits had ninety days within which to file supersedeas bonds; that, relying implicitly on these statements, defendant failed to file supersedeas

bonds in the cases mentioned within sixty days; that he reserved to file a supersedeas bond, and intended to have done so within said ninety days; that Otto Neubert presented a supersedeas bond to the clerk of said court and the same was rejected because the same was not tendered within sixty days from the rendition of said decree; that this was the first time he learned that the defendants in said suits instituted by the said Gaines did not have ninety days within which to file supersedeas bonds.

Defendant states that he has been misled and deceived as to the time said supersedeas could be filed, and deprived of (to him) a valuable right, and prays the court to set aside said decrees heretofore entered herein, and that another decree be entered the same day, to the end that he may be allowed to file sufersedeas bond.

Defendant states this application is not made for delay, but to the end he may avail himself of a right he has been deprived of by misrepresentation.

A. S. GARNETT.

Sworn to and subscribed before me this 1st day of February, 1888.

J. P. MELLARD,
[SEAL.] *Notary Public.*

LEAVENWORTH, *Feb'y 4th*, 1888.

Let no writ issue, or, if issued, let it be recalled without execution thereof and all proceedings to enforce decree be stayed till I attend at ensuing April term.

DAVID J. BREWER,
Circuit Judge.

(Endorsed:) Filed February 8th, 1888. Ralph L. Goodrich, clerk.

264 And on February 10th, 1888, as follows:

646. Comes the defendant, A. S. Garnett, by John M. Harrell, Esq., his solicitor, and files herein his supersedeas bond, which is approved by the court.

UNITED STATES OF AMERICA, }
Eastern District of Arkansas. }

Be it remembered that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 9th day of April, anno Domini one thousand eight hundred and eighty-eight, at the United States court-room, in the city of Little Rock, Arkansas, the Honorable David J. Brewer, circuit judge, presiding and holding said court, the following proceedings were had, to wit:

On April 16th, 1888:

646. Comes the complainant-, by Benjamin and Davies, Esqs., their solicitors, and file herein their motion to strike from the files the motion to set aside decree; which motion is as follows:

U. S. Circuit Court, East. Dist. of Ark., April Term, 1888.

GAINES and WIFE
vs.
A. S. GARNETT.

265 Plaintiffs move to strike the motion to set aside the decree heretofore rendered from the files, because: First. Petitioner does not ask to be relieved from any fraud, misrepresentation, or mistake caused by plaintiffs or their attornies, but from the neglect and ignorance of the relator himself and his attorney, which relief should never be granted. Second. Because the case has already been appealed to the Supreme Court of the United States and is now out of this court, and this court has no jurisdiction to set aside a decree already appealed to the United States Supreme Court. Third. Because the term in which said decree was rendered has expired, and this court is now holding a new term. Wherefore they ask that the motion may be stricken from the files of this court.

M. W. BENJAMIN,
R. G. DAVIES, *Attorneys.*

(Endorsed:) Filed April 16th, 1888. Ralph L. Goodrich, clerk.

And on May 4th, 1888, as follows:

646. Comes the defendant, by John McClure, Esq., his solicitor, and files herein allowance of supersedeas, signed by Samuel F. Miller, justice Supreme Court of United States; which is as follows:

In the Circuit Court of the United States, Eastern District of Arkansas.

WILLIAM H. GAINES and WIFE
vs.
A. S. GARNETT.
No. 646.

266 This day appeared the plaintiff-, by M. W. Benjamin and U. M. Rose, their attorneys, and the defendant, by John McClure, his attorney, and the defendant, having prayed permission to be allowed to file a supersedeas bond herein, and for time within which to file the same, it is considered, ordered, and adjudged that the defendant have until June 1st, 1888, to file a supersedeas bond in such amount as is stated in the decree heretofore rendered in this cause, and the plaintiffs at the same time excepts to said order and ruling.

April 26th, 1888.

SAMUEL F. MILLER,
Justice Sup. Court U. S.

(Endorsed:) Filed May 4th, —. Ralph L. Goodrich, clerk.

And on May 25th, 1888, as follows:

646. Comes the defendant and files herein his cost bond and supersedeas bond, and it is ordered that the same be approved as of May 24th, 1888; which bond is as follows: